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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FOURTH INSTALMENT OF "F1" CLAIMS

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Introduction

1. This is the fifth report (the "Report") submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules") 1/ by the Panel of Commissioners appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review category "F1" claims 2/ (the "Panel"). This Report concerns the fourth instalment of category "F1" claims.

2. The fourth instalment of category "F1" claims was submitted to the Panel in accordance with article 32 of the Rules on 18 February 1999. The instalment consists of 16 claims (the "Claims") filed by ten Governments (the "Claimants") seeking compensation in the total approximate amount of 425 million United States dollars ("US$"), 3/ including interest, as follows:

(a) Canada - Consolidated Claim (US$47,026,391);

(b) The Federal Republic of Germany - Ministry of Defence US$66,482,479);

(c) The Kingdom of the Netherlands - Ministry of Foreign Affairs (US$424,908); Ministry of Transport, Public Works and Water Management (US$411,957); Ministry of Finance (US$1,531,952); Ministry of Foreign Affairs, General Affairs Department (US$146,399) and Ministry of Defence (US$33,110,737);

(d) The Islamic Republic of Pakistan - Cabinet Division, Emergency Relief Cell (US$24,195,029) and Revenue Division (US$178,794,848);

(e) The Republic of the Philippines - Consolidated Claim (US$42,124,039);

(f) The Democratic Socialist Republic of Sri Lanka - Central Bank of Sri Lanka (US$3,014,280);

(g) The Republic of Tunisia - Tunisian Agency for Employment (US$1,200,000);

(h) The Republic of Turkey - Ministry of Communications, General Directorate of State Airports (US$296,829) and Ministry of Public Works and Settlement (US$5,954,908);

(i) The United Kingdom of Great Britain and Northern Ireland - Foreign and Commonwealth Office (US$6,117,084); and

(j) The United States of America - Department of State (US$14,301,987).

I. PROCEEDINGS

3. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims to the Governing Council in report nos. 21, 24, 25, 26 and 28, dated 8 October 1997, 8 July 1998, 13 October 1998, 11 January 1999 and 23 July 1999, respectively. These reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted additional information and views on the reports.

4. In December 1998, after a preliminary review of the Claims, notifications pursuant to article 34 of the Rules ("article 34 notifications") were issued to the Claimants requesting additional information and documents to assist the Panel in its review of the Claims.

5. Upon submission of the Claims to the Panel, procedural orders were issued informing the Claimants that their Claims were under review and had been classified as "unusually large or complex" within the meaning of article 38(d) of the Rules, and that, accordingly, the Panel would complete its review of the Claims and submit its report and recommendations thereon to the Governing Council within twelve months of 18 February 1999.

6. The Panel considered that Iraq could provide information that would assist its review of the Claims of the Netherlands Ministry of Foreign Affairs and the Turkish Ministry of Communications, General Directorate of State Airports. Accordingly, copies of these Claims as filed by the respective Claimants were transmitted to Iraq and Iraq was invited to submit a response to the Claims, in accordance with article 36 of the Rules, within six months of 18 February 1999. Responses were received from Iraq in respect of both Claims within the stipulated time period.

7. On 12 May 1999, the secretariat wrote to the Permanent Mission of Pakistan to the United Nations Office at Geneva and provided the Pakistani Cabinet Division, Emergency Relief Cell notice of the Panel's intention to hold an on-site inspection of documents to verify the Claim. An inspection team composed of three members of the secretariat and two expert

consultants performed the on-site inspection in Pakistan from 6 to 8 September 1999.

8. In the course of the review of the Claims, the Panel noted that several Claimants sought compensation for costs incurred in evacuating individuals, for payments made to reimburse Government employees for loss of personal property and for support payments made to individuals who had lost their source of income as a result of Iraq's invasion and occupation of Kuwait. As the individuals concerned might themselves have filed individual claims with the Commission in categories "C" and "D" for the same losses, the Panel was concerned that the Claimants might be seeking compensation for losses that were the subject of category "C" or "D" claims. 4/

9. Accordingly, to avoid multiple recovery of compensation across categories, the Panel instructed the secretariat to carry out cross-category checks to ascertain whether there was any duplication of claims. The cross-category checks revealed that compensation was recommended in respect of three individual claimants in category "C" for the same losses that would otherwise have been compensable in this Report. Appropriate deductions have been made to avoid multiple recovery. 5/

10. The Panel has instructed the secretariat to carry out cross-category checks to ensure that compensation will not be recommended in respect of individual claimants in category "D" for the same losses for which compensation is awarded in this Report. The Panel has further instructed the secretariat to ensure that appropriate deductions will be made from the relevant category "D" claims to avoid multiple recovery.

11. In reviewing the Claims, the Panel held regular meetings at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel. Expert consultants in accounting and loss adjusting were retained to assist the Panel in the verification and valuation of the Claims.

II. LEGAL FRAMEWORK

12. In its report on part one of the first instalment of category "F1" claims, the Panel discussed the legal framework within which the category "F1" claims would be decided by the Panel. 6/ The discussion covered the applicable law, the procedural requirements and evidentiary standards imposed on claimants, and the Panel's role in the proceedings. The Panel's

findings concerning the applicable law, procedural requirements and evidentiary standards set out therein are also applicable to the Claims.

III. VERIFICATION AND VALUATION

13. In applying the aforementioned procedural requirements and evidentiary standards to the Claims, the Panel undertook a careful examination of the statements of claim and evidence filed by the Claimants as well as the materials submitted by Claimants in their responses to the article 34 notifications. The Panel found that, within certain Claims, individual loss elements or portions thereof failed to meet the Commission's procedural requirements, evidentiary standards or the directness requirement as formulated in Security Council resolution 687 (1991). In such cases, the Panel found that compensation should not be awarded for those portions of the Claims.

14. With respect to the loss elements that the Panel considered compensable in principle, the Panel verified that the losses had, in fact, been incurred and then quantified such losses. In addition to verifying that the claimed losses had in fact been incurred, the Panel also considered the reasonableness of the Claimants' conduct and of the amounts claimed. For example, in the case of claims for costs of evacuation on scheduled flights, the Panel only recommended compensation for one-way economy fares.

15. In many of the Claims, the documentary and other evidence submitted established that an alleged loss had, in fact, occurred. The evidence was insufficient, however, to demonstrate with a reasonable degree of certainty the amount of that loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel received advice from the expert consultants and considered the level and type of evidence that should reasonably be required of a Claimant given the circumstances prevailing at the time of the losses, particularly in Iraq and Kuwait. 7/

16. In reaching the recommended awards, the Panel adopted general principles of loss adjustment, such as reasonableness of costs incurred, depreciation and betterment. For example, in claims for lost or damaged property, the age and use of the property at the time the loss or damage occurred was taken into account and deductions were made where appropriate.

IV. COMMON ISSUES

17. As in previous instalments, the Claims give rise to a number of common legal issues. In addressing these common issues, the Panel has formulated and applied certain principles that are set out below.

A. Supplements or amended claims

18. The Governing Council has determined that, with the exception of environmental claims, after 1 January 1997 no category "F" claims will be accepted for filing under any circumstances and that after 11 May 1998, unsolicited supplements to previously filed claims in category "F" will not be admitted. 8/ In view of these determinations, the Panel finds that new claims submitted after 1 January 1997 - be they new categories of loss or additional loss elements - are not admissible as they are time barred. Further, information or documentation submitted in response to article 34 notifications, procedural orders or received by way of unsolicited supplements delivered to the Commission after 11 May 1998 cannot increase the amount claimed.

B. Military costs

19. The Panel notes that Governing Council decision 19 confirms that "the costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation". 9/ Accordingly, compensation will not be recommended for Claims, or portions thereof, that the Panel finds to constitute such military costs.

C. Relief contributions made by Governments

20. A number of the Claimants seek compensation for relief contributions made to international organizations and other entities. Pursuant to paragraph 36 of Governing Council decision 7, compensation is, in principle, available to reimburse payments made or relief provided by Governments to others for losses covered by any of the criteria adopted by the Governing Council.

21. As a general rule, the Panel considers that regular and non-specific relief contributions made by Governments are not compensable, as they do not satisfy the directness requirement. In contrast, the Panel considers that specific and non-regular relief contributions made by Governments do satisfy the directness requirement where the following conditions are met. First, the purpose of the contribution must be to respond to a state of

necessity in the form of a specific and urgent need that resulted directly from Iraq's invasion and occupation of Kuwait. Such a state of necessity might be evidenced, for example, by an appeal from an international organization for contributions for such a specific purpose. Second, the contribution must have been for losses that are covered by any of the criteria adopted by the Governing Council. Third, the contribution must have been actually used to respond to the specific and urgent need.

D. Claim preparation costs

22. The Panel notes that, in a letter dated 6 May 1998, it was notified by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claims preparations costs at a future date. Accordingly, no action has been taken by the Panel in respect of the costs incurred in preparing the Claims.

E. Claims processing costs

23. The Panel notes that Governing Council decision 18 addresses, inter alia, the issue of claims processing costs. In particular, paragraph 1 provides that:

> "Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants ... Such fees shall be commensurate with the actual expenditure of Governments. In the case of awards payable to claimants in categories 'A', 'B' and 'C', the fees should not exceed 1.5 per cent, and for awards payable to claimants in categories 'D', 'E' and 'F', the fees should not exceed 3 per cent." 10/

24. When considering claims processing costs in earlier instalments, the Panel concluded that "it was intended that this fee be the sole compensation to which Governments are entitled in respect of their claim processing expenditures" and, accordingly, awarded no compensation. 11/ That conclusion is also applicable to the Claims.

F. Currency exchange rates

25. As in the first four Reports, some of the Claimants have suffered losses or stated their claims in currencies other than United States dollars. Since the Commission issues awards in United States dollars, the Panel is required to determine and to apply the appropriate rates of exchange. Like other panels of Commissioners, the Panel has consistently

determined that the currency exchange rates as at the date of loss is the most appropriate method of calculating the applicable exchange rates. 12/

26. In its first four Reports, the Panel found that the losses had occurred fairly regularly throughout the period of Iraq's occupation of Kuwait, namely from 2 August 1990 to 2 March 1991. The Panel thus adopted 16 November 1990, the midpoint of the occupation period, as the date of loss. 13/ Furthermore, the Panel also noted that special circumstances existed in relation to the exchange rate to be adopted for losses incurred in Kuwaiti dinars. Since the invasion and occupation of Kuwait had caused a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation, the Panel adopted the exchange rate for the Kuwaiti dinar that had prevailed immediately prior to the invasion. 14/

27. The Panel finds that the majority of losses for which compensation is sought in the present instalment also occurred fairly regularly throughout the period of the occupation of Kuwait but that, in general, it is not possible to identify the precise date of their occurrence. Therefore, the Panel considers 16 November 1990, the midpoint of the occupation period, to be the most appropriate date for determining the applicable exchange rates in connection with the Claims. For the reasons given above, 1 August 1990 is the date adopted for determining the exchange rate for the Kuwaiti dinar.

28. The rates of exchange used as at 1 August 1990 for the Kuwaiti dinar and as at 16 November 1990 for other currencies are the monthly rates as reported in the United Nations Monthly Bulletin of Statistics of April 1991. 15/

G. Interest

29. A number of the Claims include a claim for interest on the principal amount claimed. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The decision added that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will be paid after the principal amount of awards". 16/ Thus, the Panel needs only to set the date from which interest will run. For the same reasons that it adopted 16 November 1990 as the date of loss for the purpose of determining exchange rates, the Panel considers that the same date should

be used for calculating interest. Accordingly, the Panel determines that the date from which interest should run is 16 November 1990.

H. Categorization

30. The standard claim form for category "F" claims contains the following loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage; depletion of natural resources; and other losses. 17/ In the first instance, Claimants classified their losses pursuant to these heads of loss. On a number of occasions, after reviewing the Claimants' contentions and supporting documents, the Panel has considered it more appropriate to review a particular loss under a different loss type. These losses are discussed below as reclassified.

V. THE CLAIMS

A. Canada - Consolidated Claim (UNCC Claim No. 5000098)

31. The Claim by the Government of Canada originally sought compensation for the costs incurred by six Government departments - the Department of External Affairs; Environment Canada; Transport Canada; Public Works and Government Services Canada; the Canadian International Development Agency; and the Department of National Defence - for a total of 55,658,656 Canadian dollars ("Can$"). However, this amount appears to be an arithmetical error on the face of the Statement of Claim, since the component items total Can$55,759,656. The claims of Environment Canada and Transport Canada appear to relate to environmental damage; these portions of the Claim have been severed and assigned to the category "F4" Panel, appointed to review environmental claims. 18/ The remaining portions of the Claim total Can$54,315,482. The claims of each department, as reclassified by the Panel, are addressed in turn.

1. Department of External Affairs

(a) Contract

(i) Facts and contentions

32. The Department of External Affairs seeks compensation in the total amount of Can$1,498,837 for contract losses.

33. The Department asserts that it reimbursed members of its diplomatic missions in Iraq and Kuwait for personal property that was damaged or that had to be left behind when its staff was evacuated from the region. The Department also asserts that it reimbursed members of its diplomatic missions in Iraq, Kuwait, Israel, Saudi Arabia, Syria, Jordan, Algeria, Morocco and Tunisia for expenses they incurred in respect of accommodation, food and travel related to their evacuation.

34. The reimbursements for personal property and the reimbursements for accommodation, food and travel expenses were each made pursuant to special regulations governing the diplomats' contracts of employment.

(ii) Analysis and valuation

35. With regard to the claim for personal property reimbursements, the Panel notes that in the Fourth Report, it considered similar claims for indemnification made in respect of personal property losses and found them to be compensable losses "'to the extent that the reimbursements ... were made pursuant to special decrees or laws and regulations governing the employment contracts of members of the diplomatic service' provided they were adequately supported by documentary and other appropriate evidence." 19/ The Panel determines that the same approach is applicable here and that, to the extent they are supported by sufficient evidence, the personal property reimbursements in question are compensable, with appropriate adjustments for depreciation.

36. With regard to the claim for accommodation, food and travel expense reimbursements, the Panel notes that, despite a request in the article 34 notification, the Claimant did not provide sufficient evidence to support the claim. Accordingly, the Panel recommends no award of compensation in respect of the claim for these reimbursements.

(iii) Recommendation

37. The Panel recommends an award in the amount of Can$18,095 (US$15,532) for contract losses.

(b) Payment or relief to others

(i) Facts and contentions

38. The Claimant seeks Can$50,000 as compensation for financial assistance payments made to reimburse Canadian nationals for food, lodging

and travel expenses they incurred as a result of being unable to leave Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait.

39. The Claimant also seeks compensation for a payment allegedly made to the Canadian Red Cross Society in the amount of Can$50,000 for the establishment of a national information bureau in Canada.

(ii) Analysis and valuation

40. The Panel finds that the financial assistance payments were for temporary and extraordinary living expenses that are, in principle, compensable losses. However, the Panel notes that, despite a request in the article 34 notification, the Claimant did not provide details of the recipients of the financial assistance, nor evidence that the payments were in fact made. The Claimant has, therefore, failed to meet the evidentiary standards imposed on claimants, as set out in article 35 of the Rules. Consequently, this portion of the Claim is not compensable.

41. The Panel considers that the claim for a Can$50,000 payment to the Canadian Red Cross Society fails to meet the directness requirement as formulated in Security Council resolution 687 (1991). Furthermore, and in any event, the Panel notes that, despite a request in the article 34 notification, the Claimant failed to provide any documentation evidencing the payment to the Canadian Red Cross Society. Accordingly, this portion of the Claim is also not compensable. 20/

(iii) Recommendation

42. The Panel recommends no award of compensation for payment or relief to others.

(c) Evacuation costs

(i) Facts and contentions

43. The Claimant seeks Can$1,014,000 as compensation for costs incurred in chartering two aircraft to evacuate Canadian nationals from Iraq and Kuwait. The Claimant chartered a passenger aircraft from Nationair, a Canadian company, for the period from 11 August to 7 September 1990. During this period the Nationair aircraft remained in Cyprus awaiting the release of Canadian nationals who were being held hostage. The Claimant also chartered an aircraft from Iraqi Airways on 6 September 1990 to

transport Canadian nationals from Iraq to Ankara, Turkey where they boarded the Nationair aircraft.

(ii) Analysis and valuation

44. In the First and Third Reports, the Panel established a number of principles governing the compensability of claims for evacuation costs. 21/ The Panel determined, inter alia, that costs incurred in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia 22/ to their home states during the period 2 August 1990 to 2 March 1991 are compensable to the extent they are supported by sufficient documentary and other appropriate evidence. The Panel also determined that compensation under this loss type should be awarded for costs incurred for necessities such as transport, accommodation, food and urgent medical treatment provided to evacuees. The Panel considers that the same principles are applicable to the Claims.

45. Applying these principles, the Panel finds that the cost of chartering the Iraqi Airways aircraft is compensable. 23/

46. With regard to the claim for the charter of the Nationair aircraft, the Panel determines that travel costs are only compensable to the extent they have been reasonably incurred. The Panel notes that, although the Claimant was requested to do so in the article 34 notification, it did not provide an explanation justifying the length of time that the Nationair aircraft remained on standby in Cyprus. In the absence of such an explanation, the Panel considers that keeping an aircraft on standby for nearly one month was not reasonable. It recommends that compensation be awarded for the cost of chartering the aircraft for three days, the time it would reasonably have taken it to fly from Canada to the Middle East, collect the released hostages and return to Canada.

(iii) Recommendation

47. The Panel recommends an award in the amount of Can$352,525 (US$302,597) for evacuation costs.

(d) Public service expenditures

(i) Facts and contentions

48. The Claimant seeks compensation in the total amount of Can$8,774,795 for the following public service expenditures.

49. Compensation totalling Can$2,084,000 is sought in respect of increased telecommunications costs incurred by the Claimant in the aftermath of Iraq's invasion of Kuwait. These costs include the purchase of satellite telecommunications units for Canadian Embassies in the Middle East; the cost of increased use of conventional and satellite telecommunications systems; the cost of emergency courier services to Canadian diplomatic missions in the Middle East, and staffing costs for additional telecommunications operators.

50. The Claimant asserts that, following Iraq's invasion and occupation of Kuwait and the closure of the Canadian Embassy in Kuwait, it established temporary diplomatic missions in Qatar and Bahrain and relocated the offices of the Canadian immigration programme from Kuwait to Jordan and Saudi Arabia. Compensation totalling Can$960,000 is claimed for the costs of these temporary missions and relocations.

51. Compensation is also sought for the costs incurred by the Department of External Affairs in establishing and operating a Gulf War Task Force in Ottawa and for the increased operating costs of Canadian diplomatic missions in the Middle East, Washington D.C. and London. The Claimant asserts that the Gulf War Task Force was established "to coordinate all of the crisis-related activities (evacuation, political, consular, commercial, sanctions, communications)". A total of Can$1,947,000 is sought.

52. The Claimant seeks Can$243,000 as compensation for the costs incurred by the Department of External Affairs in responding to questions from the media on the crisis; in preparing press releases; and in monitoring developments in the media.

53. The Claimant also seeks compensation for the travel costs of a Canadian consular official who accompanied Canadian Embassy staff in Iraq on their evacuation journey; for costs incurred in redeploying members of diplomatic missions; and for travel costs for department officials attending meetings in Paris, Washington D.C. and Rome on the "crisis in the Gulf". A total of Can$561,163 is claimed.

54. Compensation totalling Can$2,624,000 is sought for the costs incurred by the Department of External Affairs in increasing the security of Canadian diplomatic missions in the Middle East and elsewhere. The measures included the deployment of security guards to the Canadian missions in Amman, Bogota, Damascus, Riyadh, Tehran and Tunis; and the provision of armoured and four-wheel drive vehicles to the Canadian missions in Amman, Baghdad and Damascus.

55. Finally, the Claimant seeks Can$355,632 in respect of expenses it incurred in processing the claims of individuals and corporations for submission to the Commission.

(ii) Analysis and valuation

56. With regard to the claims for increased telecommunications costs; costs incurred in establishing and operating the Gulf War Task Force in Ottawa, increased operational costs of various diplomatic missions, media monitoring costs, travel costs of the consular official accompanying the Canadian evacuees, redeployment costs, and travel costs for department officials attending meetings on the crisis, the Panel notes that it has considered similar claims in previous Reports. For example, in the Third Report the Panel considered claims for "public service expenditures of a general nature, such as costs of official missions, costs of transfer of diplomats and salaries for additional staff and overtime payments made to members of ... diplomatic missions in the Middle East" 24/ and stated that:

> "[T]hese expenses were incurred by States in the exercise of protective functions in times of emergency. As these tasks are an integral part of the functions of diplomatic missions they cannot ... be considered to be of the extraordinary nature that would warrant their compensabilty". 25/

57. The Panel further notes that in the Fourth Report it applied the same reasoning to claims for similar costs incurred by domestic Government departments. 26/ Accordingly, the Panel finds that the Claimant's costs referenced in the paragraph above are not compensable, since they do not constitute public service expenditures of an extraordinary nature.

58. With regard to the claim for the costs incurred in establishing temporary diplomatic missions in Qatar and Bahrain and relocating the offices of the Canadian immigration programme from Kuwait to Jordan and Saudi Arabia, the Panel notes that in the First Report it considered similar claims for the costs incurred by a State in establishing and operating a temporary embassy in Abu Dhabi following the closure of its Embassy in Kuwait City. There the Panel found that "even if [that State] would not otherwise have opened an Embassy in Abu Dhabi, its voluntary and independent decision to operate a diplomatic mission there during the period of the occupation of Kuwait has not resulted in a direct loss within the meaning of paragraph 16 of [Security Council] resolution 687 (1991)". 27/ The Panel considers that the same principles are applicable here and, accordingly, recommends no compensation for the costs incurred in

establishing temporary diplomatic missions and relocating the offices of the immigration programme.

59. With regard to the claim for costs incurred in increasing the security at Canadian diplomatic missions, the Panel considers that such costs are compensable only if they were incurred as a direct result of Iraq's invasion and occupation of Kuwait and were reasonable in the prevailing circumstances. In this regard, the Panel notes that in the Third Report, it considered the compensability of costs incurred by Governments in taking safety measures for the protection of individuals and property and determined that such costs are compensable "provided they are reasonable in relation to the type of risk to which the individual and/or property is exposed". 28/ In the Fourth Report the Panel set down additional guidelines as to what constitutes a "reasonable" protective measure. It determined, inter alia, that only protective measures taken within a specific geographic area are compensable. It held that "[f]or the same reasons that the Panel limited the compensability of evacuation costs to those costs incurred in evacuating individuals from Iraq, Kuwait, Israel and Saudi Arabia only, ... it also limits the compensability of costs incurred in taking protective measures to those taken in respect of individuals and property in the same four States." 29/

60. The Panel considers that these same guidelines are applicable here. The Panel finds, however, that the Claimant has failed to provide sufficient information and evidence for it to ascertain whether the increased security measures were incurred as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, these costs are not compensable.

61. With regard to claims processing costs, for the reasons given in section IV.E above, the Panel finds that such costs are not compensable.

(iii) Recommendation

62. The Panel recommends no award of compensation for public service expenditures.

2. Public Works and Government Services Canada

(a) Public service expenditures

(i) Facts and contentions

63. According to the Claimant, Public Works and Government Services Canada is the Government department responsible for the management of Government property. Its responsibilities include the development and updating of "readiness plans" and crisis management procedures for wartime and other emergencies, as well as the organization and coordination of security measures for all Government buildings in Canada.

64. Compensation in the total amount of Can$1,092,500 is sought for various increased security measures taken in Canada, such as the provision of additional security guards to Government buildings.

(ii) Analysis and valuation

65. The Panel considers that the principles and guidelines set out in paragraph 59 above are applicable to the claim of Public Works and Government Services Canada.

66. Since the expenses for which compensation is claimed were incurred in providing additional protection for properties located in Canada, the Panel finds that they are not compensable.

(iii) Recommendation

67. The Panel recommends no award of compensation for public service expenditures.

3. Canadian International Development Agency

(a) Payment or relief to others

(i) Facts and contentions

68. The Claimant asserts that one of the functions of the Canadian International Development Agency is the provision of "financial support for efforts to alleviate human suffering caused by natural and made-man disasters." The support is normally channelled through international and non-governmental organizations. Compensation is sought for 39 relief

contributions that were made by the Government of Canada to a number of international organizations and other entities during and after the period of Iraq's invasion and occupation of Kuwait, and which were additional to the regular payments and contributions made by the Government of Canada to these organizations. In general, the contributions were used to provide assistance to: (1) non-Iraqi persons who left Iraq or Kuwait during the period of Iraq's invasion and occupation of Kuwait; (2) Iraqi Kurds and other Iraqi refugees who left Iraq after the period of Iraq's invasion and occupation of Kuwait; (3) hospitals providing medical services in Israel during the period of Iraq's invasion and occupation of Kuwait; and (4) other persons who were in Iraq or Kuwait during and/or after the period of Iraq's invasion and occupation of Kuwait. The Claimant seeks compensation totalling Can$33,142,350 in respect of these contributions.

(ii) Analysis and valuation

69. The Panel finds that a number of the relief contributions made by the Government of Canada do not satisfy the requirements set forth in section IV.C above, since they were not used to respond to a specific and urgent need for losses directly resulting from Iraq's invasion and occupation of Kuwait.

70. The Panel notes that in the First Report it considered the issue of whether losses occurring outside the period of Iraq's invasion and occupation of Kuwait (i.e., 2 August 1990 to 2 March 1991) are compensable. It found, in accordance with the findings of the category "C" Panel, that the occurrence of losses outside this period imposes an extra burden on a claimant to provide an explanation as to why such loss should be considered a direct result of Iraq's invasion and occupation of Kuwait. 30/ In the Fourth Report the Panel determined that, in the absence of such an explanation, losses will only be compensable if they relate to a reasonable period immediately after the liberation of Kuwait. 31/ In the circumstances of the claims under consideration in the Fourth Report, the Panel found 1 May 1991 to be a reasonable cut-off date for compensation. 32/ The Panel considers that, in the absence of an adequate explanation, 1 May 1991 is also a reasonable cut-off date for the relief contributions claimed by the Government of Canada. As a result, the Panel finds that the relief contributions provided by the Government of Canada in respect of the period after 1 May 1991 are not compensable.

71. Further, the Panel finds that the exodus of Kurdish and other Iraqi refugees after 2 March 1991 towards and across international frontiers was not a direct result of Iraq's invasion and occupation of Kuwait.

Accordingly, the Panel finds that the relief contributions made by the Government of Canada to assist such refugees are not in principle compensable.

72. The Panel recognizes that the Governing Council in decision 7, paragraph 11, stated that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". 33/ The Panel therefore considers that compensation are not be awarded to a Government to reimburse contributions made to persons who would not be eligible to seek compensation from the Commission in their own capacity. Accordingly, the Panel finds that relief contributions made by the Government of Canada to assist Iraqi nationals who do not have bona fide nationality of any other State are not compensable.

73. In sum, the Panel considers that the relief contributions made by the Government of Canada that are not otherwise excluded by the findings in paragraphs 70-72 above, are compensable to the extent they are supported by sufficient documentary and other appropriate evidence.

(iii) Recommendation

74. The Panel recommends an award in the amount of Can$10,311,450 (USD$8,851,030) for payment or relief to others.

4. Department of National Defence

(a) Payment or relief to others

(i) Facts and contentions

75. The Department of National Defence seeks compensation totalling Can$1,482,773 in respect of 307 gas masks supplied to Canadian nationals in the Middle East and 10,000 gas masks provided to the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA") in February 1991 for distribution to Palestinian refugees in the Occupied Territories.

(ii) Analysis and valuation

76. With regard to the claim for gas masks supplied to Canadian nationals in the Middle East, the Panel recalls the geographic limits on the compensability of protective measures set out in paragraph 59 above. In addition, the Panel notes that despite a request in the article 34

notification to provide details of the location of the Canadian nationals in the Middle East, the Claimant has not done so. In the absence of this information the Panel cannot determine whether the gas masks were supplied to individuals within Iraq, Kuwait, Saudi Arabia or Israel, and therefore cannot recommend any compensation.

77. With regard to the claim for gas masks provided to Palestinian refugees in the Occupied Territories, the Panel finds that the requirements set forth in section IV.C above, regarding the compensability of relief contributions made by Governments, are satisfied. As a result, the Panel determines that this claim is compensable to the extent that it is supported by sufficient documentary and other appropriate evidence.

(iii) Recommendation

78. The Panel recommends an award in the amount of Can$143,240 (US$122,953) for payment or relief to others.

(b) Public service expenditures

(i) Facts and contentions

79. The Claimant seeks Can$6,405,000 as reimbursement for war risk re-insurance and war catastrophe re-insurance premiums. The Claimant asserts that it purchased a twelve-month war risk re-insurance policy, beginning on 15 January 1991, for members of the Canadian armed forces, covering accidental death in respect of war risk while on service in the Middle East. The Claimant asserts that, following Iraq's invasion of Kuwait, its war catastrophe re-insurers demanded an additional premium for war risk exposure "as a direct result of [Canada's] involvement in the Gulf War".

80. The Claimant further asserts that in the wake of Iraq's invasion and occupation of Kuwait and the deployment of Canadian forces to the Persian Gulf, it transferred 70 military medical personnel from military hospitals in Canada to the Middle East and had to employ civilian back-up employees to maintain essential health-care services in Canada. Compensation totalling Can$229,945 is sought for the costs incurred in replacing the military medical personnel.

81. Finally, the Claimant seeks Can$575,282 for the costs incurred in implementing additional security measures at all Department of National Defence headquarters buildings in Ottawa during the period from 2 August 1990 to 2 March 1991.

(ii) Analysis and valuation

82. With regard to the claim for the additional insurance premiums, the Panel notes that the costs relate directly to Canada's participation as a member of the Allied Coalition Forces. The Panel therefore finds that the claimed costs constitute military costs that, for the reasons set out in section IV.B above, are not compensable.

83. The Panel notes that although the military medical personnel replacement costs relate to salaries paid to the replacement civilian medical employees, the need to employ them arose as a direct result of the transfer of military medical personnel to the Middle East to assist in the military hospitals. The Panel finds that these costs also relate to Canada's participation as a member of the Allied Coalition Forces. Accordingly, they constitute military costs that, for the reasons set out in section IV.B above, are not compensable.

84. With regard to the claim for the costs of implementing additional security measures, the Panel finds that, as the security measures were taken solely in Canada, for the reasons set out in paragraph 59 above, they are not compensable.

(iii) Recommendation

85. The Panel recommends no award of compensation for public service expenditures.

5. Recommendation for Canada

86. Based on its findings regarding the Claim of Canada, the Panel recommends compensation in the amount of US$9,292,112.

Table 1. Recommended compensation for Canada

Claim element	Claim amount (original currency) (CAN$)	Claim amount (US$)	Recommended compensation (US$)
1. Department of External Affairs:			
Contract	1,498,837	1,297,694	15,532
Payment or relief to others	100,000	86,580	nil
Evacuation costs	1,014,000	877,922	302,597
Public service expenditures	8,774,795	7,597,225	nil

Claim element	Claim amount (original currency) (CAN$)	Claim amount (US$)	Recommended compensation (US$)
2. Public Works and Government Services Canada:			
Public service expenditures	1,092,500	945,888	nil
3. Canadian International Development Agency:			
Payment or relief to others	33,142,350	28,694,675	8,851,030
4. Department of National Defence:			
Payment or relief to others	1,482,773	1,283,786	122,953
Public service expenditures	7,210,227	6,242,621	nil
Total	54,315,482	47,026,391	9,292,112

B. Federal Republic of Germany - Ministry of Defence (UNCC Claim No. 5000277)

87. The Claim by the Ministry of Defence originally sought compensation for three loss types, as reclassified by the Panel - contract, payment or relief to others and environmental damage and environmental damage - in the total amount of 136,480,304 deutsche mark ("DM"). The portion of the Claim relating to environmental damage has been severed and assigned to the category "F4" Panel appointed to review environmental claims. 34/ The remaining portions of the Claim totalled DM 103,854,304. However, in its response to the article 34 notification, the Claimant reduced its Claim to DM 103,845,632.

1. Contract

(a) Facts and contentions

88. The Ministry of Defence originally sought compensation in the amount of DM 199,554 for reimbursements that it made to three members of the German armed forces for household equipment losses in Iraq. The payments were made pursuant to special regulations governing the employment contracts of members of the armed forces.

89. In its response to the article 34 notification, the Claimant made adjustments reflecting the actual amounts reimbursed to the three servicemen. These adjustments reduced the total amount claimed to DM 190,882.

(b) Analysis and valuation

90. The Panel considers that, for the reasons given in paragraph 35 above, the claim for reimbursements made by the Claimant to three members

of the German armed forces for household equipment they lost in Iraq is compensable, to the extent it is supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

91. The Panel recommends an award in the amount of DM 95,441 (US$63,416) for contract losses.

2. Payment or relief to others

(a) Facts and contentions

92. The Claimant seeks DM 103,654,750 as compensation for costs incurred in providing assistance to Kurdish refugees in Iran and Turkey. The Claimant explains that "[c]omponents of army battalions ... and of an air force squadron ... were deployed in Iran [from] 2nd May to 22nd June 1991". The costs for which compensation is claimed relate to, inter alia, petrol and oil, the rental of telecommunication equipment, the operation of a field hospital and the purchase of medical equipment, and the cost of chartering and maintaining aircraft.

(b) Analysis and valuation

93. The evidence submitted in support of this portion of the Claim indicates that the assistance was provided pursuant to decisions of the Government of the Federal Republic of Germany taken on 17 and 24 April 1991. The dates on which the assistance programme was launched and its focus leads the Panel to conclude that the relief was provided pursuant to Security Council resolution 688 (1991) of 5 April 1991. 35/

94. The Panel therefore finds that, for the reasons set forth in paragraph 71 above, the costs of the assistance provided to Kurdish refugees who left Iraq after 2 March 1991 cannot be considered as losses directly resulting from Iraq's invasion and occupation of Kuwait.

(c) Recommendation

95. The Panel recommends no award of compensation for payment or relief to others.

3. Recommendation for the Federal Republic of Germany

96. Based on its findings regarding the Claim of the Federal Republic of Germany, the Panel recommends compensation in the amount of US$63,416.

Table 2. Recommended compensation for the Federal Republic of Germany

Claim element	Claim amount (original currency) (DM)	Claim amount (US$)	Recommended compensation (US$)
Contract	190,882	122,204	63,416
Payment or relief to others	103,654,750	66,360,275	nil
Total	103,845,632	66,482,479	63,416

C. Kingdom of the Netherlands

1. Ministry of Foreign Affairs (UNCC Claim No. 5000005)

97. The Ministry of Foreign Affairs originally sought compensation for four loss types - contract, real property, other tangible property and environmental damage - for a total of 4,251,996 Netherlands guilders ("NLG"). The environmental damage portion of the Claim has been severed and assigned to the category "F4" Panel appointed to review environmental claims. 36/ The remaining portions of the Claim totalled NLG 751,996. However, in its response dated 26 March 1999 to the article 34 notification, the Ministry of Foreign Affairs reduced its Claim to NLG 748,263.

98. In its response to the article 34 notification, the Ministry of Foreign Affairs also attempted to introduce a new claim, for which it had not hitherto sought compensation: NLG 178,531 in relation to "running costs" of the Embassy of the Netherlands in Baghdad. The costs, consisting principally of fuel, taxi fares, local salaries, supplies and repairs, were allegedly incurred by the acting caretaker of the Embassy after the departure of the diplomatic staff.

99. The Panel finds that in accordance with the principles set out in section IV.A above, the Claimant's introduction of this new claim in its response to the article 34 notification is not admissible.

(a) Contract

(i) Facts and contentions

100. Compensation in the amount of NLG 428,384 was originally sought for rent paid in advance on the Netherlands' Embassies and staff residences in Kuwait and Iraq that remained vacant during the seven-month period of Iraq's occupation of Kuwait. This figure was reduced to NLG 424,650 in the response to the article 34 notification.

(ii) Analysis and valuation

101. In the First Report, the Panel found that "the mere permanent or temporary closure of a diplomatic mission, even in times of armed conflict, does not give rise to a claim for compensation" and that "[i]n any event, ... the Claimant would have incurred the rental expense regardless of whether Iraq invaded and occupied Kuwait." 37/ Similarly, in the Third Report, the Panel found that "rent paid in advance by Governments for staff residences should be considered in the same way as prepaid rent on Embassy buildings". 38/ The Panel finds that the same approach should be adopted here, with the result that the pre-paid rent is not compensable.

(iii) Recommendation

102. The Panel recommends no award of compensation for contract losses.

(b) Real property

(i) Facts and contentions

103. The Claimant seeks compensation in the amount of NLG 4,564 for the costs it incurred in restoring the garden of the Embassy of the Netherlands in Kuwait. It is asserted that during the period of the occupation "the garden of the official residence was completely neglected. As a result, all the plants have withered."

(ii) Analysis and valuation

104. In the first four Reports, the Panel addressed the compensability of claims for repairs to Embassy premises damaged in Kuwait and Iraq during the period 2 August 1990 until 2 March 1991. 39/ The Panel concluded that such costs can be considered as arising directly from Iraq's invasion and occupation of Kuwait. That reasoning is applicable here. As such, the

claimed costs are compensable to the extent they are reasonable and supported by sufficient documentary and other appropriate evidence.

105. The Panel has reviewed the evidence submitted and finds that the costs of restoring the garden of the Embassy in Kuwait are reasonable and are supported by sufficient evidence. 40/

(iii) Recommendation

106. The Panel recommends an award in the amount of NLG 4,112 (US$2,422) for real property losses.

(c) Other tangible property

(i) Facts and contentions

107. The Claimant seeks compensation for loss or damage to tangible property belonging to the Government of the Netherlands that had been supplied to the residences of staff of the diplomatic missions in Kuwait and Iraq. The original submission sought NLG 99,160 and NLG 160,000 for the losses in Kuwait and Iraq, respectively. In its response to the article 34 notification, the Ministry of Foreign Affairs attempted to increase these amounts to NLG 112,795 and NLG 235,313, respectively.

108. Further, the Claimant seeks NLG 59,889 as compensation for the replacement value of communications equipment disabled by its staff for security reasons prior to the closure of its missions in Kuwait and Iraq, and for the value of computer equipment lost or stolen from its Baghdad Chancery.

(ii) Analysis and valuation

109. The Panel notes that, on the basis of the principles set out in section IV.A above, the Ministry of Foreign Affairs' attempted increases of the claimed amounts in its response to the article 34 notification are not admissible.

110. In the First Report, the Panel determined that, for the reasons given in respect of claims for damage to real property, claims for loss or damage to other tangible property located in Iraq and Kuwait are compensable if they are supported by sufficient documentary and other appropriate evidence. 41/ In applying those reasons here, the Panel finds that, given the fact that the Claimant's diplomatic staff were unable to protect the Claimant's tangible property in Iraq and Kuwait from damage or capture

during the period of Iraq's invasion and occupation of Kuwait, the causal link between the Claimant's tangible property losses and Iraq's invasion and occupation of Kuwait has been established. Accordingly, the Panel finds that the other tangible property claim of the Ministry of Foreign Affairs is compensable, to the extent it is supported by sufficient documentary and other appropriate evidence.

111. The evidence submitted in support of this portion of the Claim indicates that losses were suffered. Accordingly, the Panel finds that, to the extent the losses are supported by sufficient evidence, they are compensable, adjustment being made for depreciation.

(iii) Recommendation

112. The Panel recommends an award of NLG 143,571 (USD$84,553) in respect of other tangible property losses.

2. Ministry of Transport, Public Works and Water Management (UNCC Claim No. 5000007)

(a) Contract

(i) Facts and contentions

113. Compensation totalling NLG 725,457 is sought by the Ministry of Transport, Public Works and Water Management for payments made under eight contracts entered into with private contractors for certain civil engineering projects in the Netherlands. Some of these contracts included a "risk" clause under which the Claimant agreed to bear any additional costs of performance of the contract caused by the cost of construction materials and fuels rising above a stipulated price. The Claimant asserts that, as a result of Iraq's invasion and occupation of Kuwait, the world-wide prices of mineral oil and bitumen increased and reached the ceilings set in the contracts. Accordingly, it was obligated to reimburse the contractors for the additional costs of carrying out the work under the contracts.

(ii) Analysis and valuation

114. Despite a request in the article 34 notification, the Claimant did not provide information on a number of issues relevant to the Claim. These include, for example, details of the Uniform Administrative Conditions which governed the contracts, information regarding the prices of fuel before and after Iraq's invasion and occupation of Kuwait, and a

description of the efforts made to seek alternative sources of fuel to reduce the amounts due under the contracts. The Panel, therefore, is unable to determine whether the losses for which compensation is claimed were a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, this Claim is not compensable.

(iii) Recommendation

115. The Panel recommends no award of compensation for contract losses.

3. Ministry of Finance (UNCC Claim No. 5000056)

(a) Public service expenditures

(i) Facts and contentions

116. The Ministry of Finance originally sought NLG 3,453,791 as compensation for the costs incurred in seizing and safekeeping the cargo of a ship that was unable to reach its destination in Iraq following the invasion of Kuwait. In a communication dated 22 April 1996 the Claimant reduced the claimed amount to NLG 2,697,768.

117. The Claimant asserts that the ship, on a time charter for an Iraqi charterer, left Europe at the end of July 1990 with a cargo of cement and other building materials, the bulk of which was to be off-loaded in Iraq. Following Iraq's invasion and occupation of Kuwait, the shipping company declared the charter contract terminated because of the risk of it becoming illegal in view of the sanctions imposed by the Security Council. In September 1990 the vessel returned to a port in the Netherlands where it berthed and where customs formalities were commenced.

118. The Claimant further asserts that the cargo was considered goods in transit and, as such, was subject to the 1990 Iraq-Kuwait Import and Export regulations. As the cargo's destination was Iraq, the authorities considered that there existed a risk that allowing the ship to continue on its journey would violate Netherlands legislation (the "Sanction Law") implementing the trade embargo against Iraq. 42/ In September 1990, the ship and its cargo were seized and transferred to the Inspector of State Property in accordance with applicable legislation of the Netherlands. According to the Claimant, the seizing state is responsible for the cost of seizing and safeguarding the goods and that it bore these costs from the date of seizure until the cargo was deemed to be the responsibility of the master of the ship.

(ii) Analysis and valuation

119. In the Panel's view, the crucial fact in the sequence of events giving rise to the Claim is the seizure of the ship and its cargo by the Netherlands authorities, pursuant to Netherlands law giving effect to the United Nations trade embargo.

120. The Panel notes that paragraph 6 of Governing Council decision 9 provides, in part, that "[t]he trade embargo and related measures, and the economic situation caused thereby, will not be accepted as the basis for compensation." 43/

121. Governing Council decision 15 provides additional guidance as to the compensability of losses related to the trade embargo. 44/ Paragraph 3 reiterates the limitation on compensability set out in paragraph 6 of Governing Council decision 9 in the following terms: "Although the UN trade embargo was imposed in response to Iraq's invasion and occupation of Kuwait, losses suffered solely as a result of that embargo are not considered eligible for compensation because the causal link between the invasion and the loss is not sufficiently direct."

122. Paragraph 9 of Governing Council decision 15 provides guidance on the meaning of the statement in paragraph 6 of Governing Council decision 9 quoted in paragraph 120 above. Subparagraph (i) of paragraph 9 of Governing Council decision 15 provides, in part, that:

> "[t]he practical effect of this statement is that any loss, damage, or injury resulting solely from the trade embargo and related measures, and the economic situation caused thereby, is not eligible for compensation. The trade embargo and related measures are the prohibitions in United Nations Security Council resolution 661 (1990) and relevant subsequent resolutions and the measures taken by states in anticipation thereof and pursuant thereto, such as the freezing of assets by Governments."

123. The Panel considers that the Sanction Law constitutes "measure[s] ... taken by [a] state(s) ... pursuant [to United Nations Security Council resolution 661 (1990)]" within the meaning of subparagraph (i) of paragraph 9 of Governing Council decision 15. Accordingly, the Panel finds that any costs incurred by the Claimant as a result of the application of this decision are embargo-related costs and are not compensable.

(iii) Recommendation

124. The Panel recommends no award of compensation for public service expenditures.

4. Ministry of Foreign Affairs, General Affairs Department (UNCC Claim No. 5000057)

(a) Public service expenditures

(i) Facts and contentions

125. The Ministry of Foreign Affairs, General Affairs Department seeks NLG 257,809 as compensation for costs incurred in processing the claims of individuals and corporations for submission before the Commission.

(ii) Analysis and valuation

126. For the reasons given in section IV.E above, the Panel finds that claims processing costs are not compensable.

(iii) Recommendation

127. The Panel recommends no award of compensation for public service expenditures.

5. Ministry of Defence (UNCC Claim No. 5000058)

(a) Public service expenditures

(i) Facts and contentions

128. The Ministry of Defence seeks NLG 58,308,007 as compensation for "the (non-military) activities of the Netherlands Ministry of Defence during the UN-operations 'Desert Shield' and 'Desert Storm'". Asserted expenses include food supplies sent to Jordan; nuclear, biological and chemical ("NBC") protection equipment and medical equipment sent to Turkey; transport of equipment and personnel; purchase of medical articles; and additional Suez Canal transit costs.

129. The article 34 notification requested the Claimant to provide a detailed explanation of the nature of the operations and costs in question. The Ministry of Defence's response explains, inter alia, that the food

supplies were transported to Jordan on 3 September 1990 and were "distributed to the Jordan population through the Jordan Government"; that the NBC protection equipment and medical equipment were "donated by the Netherlands Government to the Kurd refugees"; that the transport of equipment "concerned specific military equipment that was needed by the personnel in the mission area"; that the medical articles were purchased "for the personnel of the Dutch Defence Organization who participated in the UN-operations 'Desert Shield' and 'Desert Storm'"; and that the additional Suez Canal transit costs "relate to the passage or transit of the Dutch Navy ships".

(ii) Analysis and valuation

130. With regard to the portion of the Claim relating to food provided to the Government of Jordan for distribution, the Panel finds that the requirements set forth in section IV.C above regarding the compensability of relief contributions made by Governments are satisfied. As a result, the Panel determines that this portion of the Claim is compensable, to the extent that it is supported by sufficient documentary and other appropriate evidence.

131. With regard to the portion of the Claim for the costs of NBC protection equipment and medical equipment provided to the Kurdish refugees, the Panel notes that, despite a request in the article 34 notification, the Claimant has not provided an explanation as to, first, the date on which the equipment was provided; second, the basis for the supply thereof; and third, why it considers the contribution of the equipment to be a loss directly resulting from Iraq's invasion and occupation of Kuwait. In the absence of such information, the Panel is unable to determine whether this portion of the Claim is for costs resulting directly from Iraq's invasion and occupation of Kuwait. Consequently, the Panel recommends no award of compensation for this portion of the Claim. 45/

132. With regard to the remaining portions of the Claim, the Panel finds that they either relate to the participation of the Netherlands in the military operations "Desert Shield" and "Desert Storm"; or that the Claimant did not, despite a request in the article 34 notification, provide a sufficient explanation for the Panel to determine the purpose or nature of the costs being claimed. The Panel finds that the participation of the Netherlands in the above-mentioned military operations constitutes "military operations against Iraq" within the meaning of Governing Council decision 19. 46/ Consequently, for the reasons given in section IV.B

above, the costs of these military operations are not compensable. The Panel further finds that, in the absence of the requested explanations for the remainder of the claims, the Panel is unable to determine whether they are for costs resulting directly from Iraq's invasion and occupation of Kuwait. Consequently, those claims also are not compensable.

(iii) Recommendation

133. The Panel recommends an award in the amount of NLG 226,022 (US$133,111) for public service expenditures.

6. Recommendation for the Kingdom of the Netherlands

134. Based on its findings regarding the Claims filed by the Kingdom of the Netherlands, the Panel recommends compensation in the amount of US$220,086.

Table 3. Recommended compensation for the Kingdom of the Netherlands

Claim element	Claim amount (original currency) (NLG)	Claim amount (US$)	Recommended compensation (US$)
1. Ministry of Foreign Affairs			
Contract	424,650	241,141	nil
Real property	4,564	2,592	2,422
Other tangible property	319,049	181,175	84,553
2. Ministry of Transport, Public Works and Water Management			
Contract	725,457	411,957	nil
3. Ministry of Finance			
Public service expenditures	2,697,768	1,531,952	nil
4. Ministry of Foreign Affairs, General Affairs Department			
Public service expenditures	257,809	146,399	nil
5. Ministry of Defence			
Public service expenditures	58,308,007	33,110,737	133,111
Total	62,737,304	35,625,953	220,086

D. Islamic Republic of Pakistan

1. Cabinet Division, Emergency Relief Cell (UNCC Claim No. 5000103)

135. The Claim by the Cabinet Division, Emergency Relief Cell seeks 526,000,000 Pakistan rupees ("PKR") as compensation for evacuation costs

incurred following Iraq's invasion of Kuwait. On the basis of its review of the Claim, the Panel has reclassified the individual loss items of the Claim into three loss types - evacuation costs, public service expenditures and payment or relief to others.

136. According to the Claimant, the Government of Pakistan received financial contributions from (a) the Government of the Kingdom of Norway ("Norway") in the amount of US$2.58 million (equivalent to 15 million Norwegian kroner) as partial reimbursement for cash assistance paid to evacuees upon their arrival in Pakistan and for the cost of providing transport, food and reception facilities in Pakistan to evacuees, and (b) the Commission of the European Community (the "European Commission") in the amount of US$4.45 million (equivalent to 3.4 million European Currency Units) as partial reimbursement for the cost of transporting evacuees to Pakistan by air. Norway and the European Commission were each requested to confirm what their financial contributions related to and the dates they were provided. The response received from Norway indicates that its financial contribution was transferred on 17 December 1990 to the Government of Pakistan "for exclusive coverage of costs for the repatriation of refugees from the Middle East." No response was received from the European Commission.

137. The information provided does not allow the amount of Norway's contribution to be apportioned precisely between the two components identified by the Claimant as comprising such contribution. In the absence of a precise apportionment, the Panel has therefore dealt with Norway's contribution under the loss type "payment or relief to others", and the European Commission's contribution under the loss type "evacuation costs".

(a) Evacuation costs

(i) Facts and contentions

138. At the time of Iraq's invasion of Kuwait, over 100,000 Pakistani nationals were residing in either Kuwait or Iraq. 47/ During the period from August to October 1990, the Claimant organized a large-scale evacuation operation to repatriate a great number of these individuals by air, land and sea. At the request of the Government of Pakistan, Pakistan International Airlines ("PIA") made special flights to Amman and Riyadh and repatriated over 18,800 people. The Government of Pakistan also requested Pakistan National Shipping Corporation ("PNSC") to assist in the evacuation effort by sending the vessel M.V. Shams from Karachi to Aqaba to repatriate 1,659 people. The Pakistani Embassies in Amman, Ankara, Riyadh, Tehran and

Damascus, and the Office of the Relief Commissioner in Baluchistan, were also extensively involved in the evacuation effort and helped to provide basic necessities to the evacuees.

139. The majority of Pakistani nationals who fled from Kuwait and Iraq returned overland to Pakistan through Turkey and Iran. The Government of Pakistan arranged bus transportation from Turkey and Iran for some of these evacuees, but the majority entered Pakistan through the border with Iran in private passenger vehicles.

140. The Claimant seeks compensation for the cost of the PIA and PNSC operations, for the overland transportation provided to the evacuees, and for the evacuation expenses incurred by Pakistan's Embassies and the Office of the Relief Commissioner in Baluchistan.

141. The Claimant also seeks compensation for the cost of purchasing food, shelter, blankets, medicine and other basic necessities for the evacuees and for the cost of distributing these necessities. In addition, the Claimant seeks compensation for the cost of providing security escorts, food and shelter to foreign evacuees travelling overland through Pakistan.

142. The Claimant seeks compensation in the total amount of PKR 222,248,184 in respect of evacuation costs.

(ii) Analysis and valuation

143. The Panel considers that the principles governing the compensability of claims for evacuation costs, as identified at paragraph 44 above, are applicable to this portion of the Claim of the Cabinet Division, Emergency Relief Cell.

144. On the basis thereof, the Panel recommends an award of compensation for the costs incurred by the Claimant (a) in transporting evacuees to and, in the case of foreign evacuees, through Pakistan, (b) in purchasing and distributing food, shelter, blankets, medicine and other basic necessities to evacuees, and (c) in providing for the safe journey of evacuees to their home states, to the extent that such costs are supported by sufficient documentary and other appropriate evidence.

145. The Panel finds that the European Commission's financial contribution of US$4.45 million was provided to the Government of Pakistan to offset a portion of the evacuation costs of the Cabinet Division, Emergency Relief

Cell. In this context, the Panel notes that paragraph 3.b. of Governing Council decision 13 states:

> "When the Commission learns, either through information provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories 'C', 'D', 'E' and 'F' has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss." 48/

146. The Panel therefore finds that US$4.45 million 49/ shall be deducted from the total amount of evacuation costs that the Panel would have otherwise recommended for compensation.

(iii) Recommendation

147. The Panel recommends an award in the amount of PKR 122,393,976 (US$5,601,555) for evacuation costs, after deduction of the financial contribution provided by the European Commission.

(b) Public service expenditures

(i) Facts and contentions

148. The Claimant claims PKR 207,849 for operational costs it incurred in connection with its evacuation and repatriation effort, such as overtime, travel costs and daily allowances for Government officials, stationery costs incurred in the provision of cash assistance to the evacuees upon their arrival in Pakistan, and honoraria paid to Government officials "for performing laborious duties in connection with the repatriation of Gulf War affectees".

(ii) Analysis and valuation

149. The Panel considers that the principles governing public service expenditures of a general nature, as set out in paragraphs 56 and 57 above, are applicable to this portion of the Claim of the Cabinet Division, Emergency Relief Cell.

150. Applying these principles, the Panel finds that the Claimant incurred the expenses in the exercise of its "protective functions in times of emergency" and that the expenses were not of such an extraordinary nature as to warrant their compensability.

(iii) Recommendation

151. The Panel recommends no award of compensation for public service expenditures.

(c) Payment or relief to others

(i) Facts and contentions

152. The Claimant seeks PKR 295,409,935 as compensation for cash assistance provided to 53,079 evacuees upon their arrival in Pakistan. The cash assistance was made available by the Claimant to each Pakistani "bread-earner" evacuated from Kuwait or Iraq in an amount of up to PKR 6,000 to enable them and their families to reach their final destinations in Pakistan.

153. Compensation is also sought for a total of PKR 8,133,944 in respect of costs incurred in purchasing and transporting food and relief goods to Kuwait, Iran and Turkey. The evidence provided by the Claimant in response to the article 34 notification indicates, however, that the food and relief goods were purchased and dispatched to Iran and Turkey for the "Iraqi Kurd refugees" pursuant to a communication of the Cabinet Division dated 16 June 1991.

(ii) Analysis and valuation

154. With regard to the portion of the Claim relating to cash assistance provided to evacuees, the Panel notes that in the First Report it held that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq" are compensable. 50/ Furthermore, in the Third Report, the Panel reviewed a similar claim for cash advances made to assist evacuees with the cost of the final part of their homeward journey and determined that the cash advances were payments made by a Government for "temporary and extraordinary expenses" that resulted from individuals' departure from Iraq and Kuwait and, as such, are compensable. 51/

155. The Panel finds that the same principles are applicable here, and that the cash assistance was for temporary and extraordinary living expenses. The Panel therefore determines that the claim for cash assistance is compensable, to the extent it is supported by sufficient documentary and other appropriate evidence.

156. With regard to the food and relief goods provided to the "Iraqi Kurd refugees", the date of the decision to provide assistance and the destination of the goods suggest to the Panel that the goods were provided by the Government of Pakistan pursuant to Security Council resolution 688 (1991). In the absence of evidence to the contrary, the Panel concludes that this portion of the Claim is not for losses resulting directly from Iraq's invasion and occupation of Kuwait and, as such, is not compensable. 52/

157. The Panel finds that Norway's financial contribution of US$2.58 million was provided to the Government of Pakistan to offset a portion of the payment or relief to others costs of the Cabinet Division, Emergency Relief Cell. The Panel therefore finds that based on paragraph 3.b. of Governing Council decision 13, US$2.58 million 53/ shall be deducted from the total amount of expenditures for payment or relief to others that the Panel would have otherwise recommended for compensation.

(iii) Recommendation

158. The Panel recommends an award in the amount of PKR 238,907,935 (US$10,934,002) for payment or relief to others, after deduction of the financial contribution provided by Norway.

2. Revenue Division (UNCC Claim No. 5000104)

(a) Payment or relief to others

(i) Facts and contentions

159. In view of the large number of Pakistani nationals who fled Iraq and Kuwait following Iraq's invasion and occupation of Kuwait and who made their way back to Pakistan overland, the Revenue Division granted, as a humanitarian gesture, an exemption from import taxes normally due on vehicles to all the evacuees who arrived in Pakistan by road. According to the Claimant, 7,414 vehicles registered in Kuwait prior to 31 July 1990 were granted such exemptions. The sum of PKR 4,448,000,000 was originally sought by the Revenue Division as compensation for the tax that was not levied on these vehicles. However, in its response to the article 34 notification, the Claimant indicated that only 7,269 vehicles benefited from the exemption and, accordingly, reduced its Claim to PKR 3,887,000,000.

(ii) Analysis and valuation

160. The article 34 notification required the Claimant to provide, inter alia, details of the numbers of cars that entered Pakistan from Kuwait and Iraq for the corresponding seven-month period from August to March during the five years preceding Iraq's invasion of Kuwait. The Claimant responded that "in normal circumstances the import of vehicles from Kuwait and Iraq during the period under reference was negligible. The only significant import of vehicles from ... Kuwait and Iraq was recorded in the year 1990-1991 by these vehicles brought by the fleeing Pakistanis from Kuwait via Iraq".

161. On the basis of the above response, the Panel finds that but for Iraq's invasion of Kuwait, the vehicles would not have entered Pakistan and no import tax would have been levied. The Claimant thus had no expectation of earning the import tax on the vehicles. The invasion and occupation of Kuwait gave the Claimant an opportunity to earn such tax, but it chose not to levy it. In the Panel's view the Claimant is seeking compensation for the loss of what would have been windfall profits. 54/

(iii) Recommendation

162. The Panel recommends no award of compensation for payment or relief to others.

3. Recommendation for the Islamic Republic of Pakistan

163. Based on its findings regarding the Claims filed by the Islamic Republic of Pakistan, the Panel recommends compensation in the amount of US$16,535,557.

Table 4. Recommended compensation for the Islamic Republic of Pakistan

Claim element	Claim amount (original currency) (PKR)	Claim amount (US$)	Recommended compensation (US$)
1. Cabinet Division, Emergency Relief Cell			
Evacuation costs	222,248,184	10,223,008	5,601,555
Public service expenditures	207,849	9,561	nil
Payment or relief to others	303,543,879	13,962,460	10,934,002
2. Revenue Division			
Payment or relief to others	3,887,000,000	178,794,848	nil
Total	4,412,999,912	202,989,877	16,535,557

E. The Republic of the Philippines - Consolidated Claim (UNCC Claim No. 5000276)

164. The Government of the Republic of the Philippines originally sought US$32,017,236 as compensation for the costs incurred and losses suffered by two Government departments - the Department of Foreign Affairs (the "DFA") and the Overseas Workers Welfare Association (the "OWWA") - and by the Central Bank of the Philippines (the "CBP"). In a submission dated 8 July 1999, the Claimant attempted to increase the total amount of its Claim to US$42,124,039. The claims of each entity, as reclassified by the Panel, are addressed in turn.

165. The Panel notes that, according to the "Report and Recommendations made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)", 55/ approximately 41,000 Philippine nationals left Kuwait and Iraq in August and September 1990. A significant portion of the Claim relates to the evacuation of these nationals and/or relief provided to them.

1. Department of Foreign Affairs

(a) Evacuation costs

(i) Facts and contentions

166. The DFA seeks US$1,047,998 56/ as compensation for costs incurred by the Philippine Embassies in Iraq and Kuwait in the period from August to November 1990 in evacuating Philippine contract workers. The costs relate principally to the rental of buses to transport evacuees from Kuwait to Iraq and from there to Jordan, the purchase of entry visas into Jordan, provision of food and medical assistance, and operational costs such as accommodation for officials, telephone and photocopying costs, stationery and bank charges.

(ii) Analysis and valuation

167. In previous instalments the Panel established principles for the compensability of claims for evacuation costs, as set out in paragraph 44 above. The Panel recommends compensation for all claimed evacuation costs that fall within these principles to the extent that they are supported by sufficient documentary and other appropriate evidence. However, in accordance with the reasoning set out in paragraphs 56 and 57 above, no compensation is recommended for general operational costs incurred by

Government departments and officials involved in the evacuation operations since they are not of such an extraordinary nature as to warrant their compensability.

168. The Panel notes that the evidence submitted by the Claimant demonstrates that the amount of the compensable loss was in excess of the amount claimed. However, the Panel cannot recommend more than the amount claimed. Accordingly, the recommended award is limited to the amount claimed.

(iii) Recommendation

169. The Panel recommends an award in the amount of US$1,047,998 for evacuation costs.

(b) Other

(i) Facts and contentions

170. The DFA seeks US$300,000 as compensation for the estimated costs of preparing and pursuing its claim before the Commission, which includes legal fees, travel expenses and other related costs.

171. Further, compensation was originally sought in the amount of US$1,850,089 in respect of "opportunity losses" incurred during the period from 1 August 1990 to 31 December 1994. In its submission of 8 July 1999, the DFA provided an updated calculation of the claimed "opportunity losses" in the amount of US$2,378,685 to account for the period 1 January 1995 to 30 June 1999.

(ii) Analysis and valuation

172. For the reasons set out in section IV.D above, the Panel takes no action in respect of the DFA's claim for the costs of preparing and pursuing its claim.

173. In its response to the article 34 notification, the Claimant explains that its claim for so-called "opportunity losses" is "in accordance with UNCC Decision No. 16 which provides that interest will be awarded". Further, the Claimant's calculation of the amount of this claim clearly indicates that it is a claim for interest on the principal amount sought by the DFA. Given the Claimant's characterization of its claim as one for

interest under Governing Council decision 16, the Panel makes no recommendation in respect thereof.

(iii) Recommendation

174. The Panel makes no recommendation in respect of the DFA's claims for other costs and losses.

2. Overseas Workers Welfare Association

(a) Other tangible property

(i) Facts and contentions

175. The OWWA claims US$34,988 57/ as compensation for office furnishings and supplies belonging to the OWWA in Kuwait and Iraq, and for a motor vehicle belonging to the OWWA in Kuwait that, the Claimant asserts, was stolen during the occupation.

(ii) Analysis and valuation

176. In accordance with the principles referenced in paragraph 110 above, the Panel considers that claims for loss or damage to other tangible property located in Iraq and Kuwait are compensable to the extent that the losses are supported by sufficient documentary and other appropriate evidence, deductions being made for depreciation.

177. The Panel considers that the Claimant submitted sufficient evidence to demonstrate that losses were suffered in Kuwait but not in Iraq. Accordingly, the Panel recommends compensation only for tangible property losses suffered in Kuwait.

(iii) Recommendation

178. The Panel recommends an award in the amount of US$13,917 for tangible property losses.

(b) Payment or relief to others

(i) Facts and contentions

179. The OWWA seeks US$767,760 as compensation for financial assistance payments made to evacuees from Kuwait and Iraq upon their arrival in the

Philippines "to assist in their evacuation and resettlement from the Middle East".

(ii) Analysis and valuation

180. The Panel notes that in the Third and Fourth Reports it considered similar claims for financial assistance to be compensable. 58/ Accordingly, the Panel finds that the payments in the present claim are compensable, to the extent they are supported by sufficient documentary and other appropriate evidence.

181. The Claimant provided contemporaneous lists and disbursement vouchers demonstrating that approximately 5,800 individuals or families each received a net financial assistance payment of 2,760 Philippine pesos ("P"). The Panel finds these payments are compensable. However, certain unidentified and unexplained administrative or handling costs are not compensable.

(iii) Recommendation

182. The Panel recommends an award in the amount of US$570,926 for payment or relief to others.

(c) Evacuation costs

(i) Facts and contentions

183. The OWWA originally sought US$15,079,584 as compensation for the costs it incurred in evacuating Philippine contract workers from the Middle East to the Philippines. Of this amount, US$9,612,234 related to the alleged cost billed by Philippine Airlines ("PAL") in operating an air bridge to evacuate Philippine nationals from the Persian Gulf area. In its response to the article 34 notification, the Claimant reduced the latter amount to US$3,192,881, stating that US$6,419,353 was included in PAL's category "E" claim. Consequently, the total claimed amount was reduced to US$8,660,231.

184. The individual components of the claim, as amended, are as follows: US$4,069,202 for the cost of chartering aircraft from PAL and purchasing tickets on various other airlines; US$1,109,331 for operational and logistical expenses, including costs of food, shelter, transport and medical assistance provided to the workers, expenses of officials in the Middle East and administrative expenses; US$3,192,881 in respect of an

amount billed by PAL in operating an air bridge from the Persian Gulf to the Philippines; and US$288,817 for certain evacuation related expenses incurred by Philippine Embassies.

(ii) Analysis and valuation

185. The Panel considers that the principles governing the compensability of evacuation costs developed in earlier instalments, as identified in paragraph 44 above, are applicable to the OWWA claim. Consequently, the Panel recommends compensation for all claimed evacuation costs that fall within these principles, to the extent that they are supported by sufficient documentary and other appropriate evidence. However, in accordance with the reasoning set out in paragraphs 56 and 57 above, compensation is not recommended for general operational costs incurred by Government departments and officials involved in the evacuation operations since they are not of such an extraordinary nature as to warrant their compensability.

186. The Panel has ensured that the expenses claimed by the OWWA have not been duplicated in the claim of the DFA.

(iii) Recommendation

187. The Panel recommends an award in the amount of US$4,014,229 for evacuation costs.

(d) Other

(i) Facts and contentions

188. The OWWA seeks US$600,000 as compensation for the estimated costs of preparing and pursuing its claims before the Commission, as well as US$2,177,225 in respect of a "contingent fee of [a] private law firm retained by OWWA".

189. In addition, compensation was originally sought in the amount of US$5,889,916 in respect of "opportunity losses" incurred during the period from 1 August 1990 to 31 December 1994. In its submission of 8 July 1999, the OWWA provided an updated calculation of the claimed "opportunity losses" in the amount of US$11,615,177 to account for the period 1 January 1995 to 30 June 1999.

(ii) Analysis and valuation

190. For the reasons set out in section IV.D above, the Panel takes no action in respect of the costs of preparing and pursuing the OWWA's claims, nor with respect to the "contingent fee", which the Panel finds to be a claim for preparation costs.

191. In its response to the article 34 notification, the Claimant explains that its claim for so-called "opportunity losses" is "in accordance with UNCC Decision No. 16 which provides that interest will be awarded". Further, the Claimant's calculation of the amount of this claim clearly indicates that it is a claim for interest on the principal amount sought by the OWWA. Given the Claimant's characterization of its claim as one for interest under Governing Council decision 16, the Panel makes no recommendation in respect thereof.

(iii) Recommendation

192. The Panel makes no recommendation in respect of the OWWA's claims for other costs and losses.

3. Central Bank of the Philippines

(a) Payment or relief to others

(i) Facts and contentions

193. The CBP seeks US$1,920,257 as compensation for Kuwaiti dinar banknotes that the Central Bank of Kuwait refused to redeem. According to the Claimant, during the occupation of Kuwait, Iraqi forces pillaged banknotes from the vault of the Central Bank of Kuwait. These banknotes were put in circulation and some came into the possession of Philippine nationals working in Kuwait who took the banknotes with them when they were evacuated. The CBP authorized the purchase of these banknotes in small amounts to alleviate the financial hardship of the evacuees. However, when the CBP attempted to redeem the Kuwaiti dinar banknotes, the Central Bank of Kuwait refused to accept approximately one-quarter of them on the ground that they formed part of the series that had been stolen and subsequently cancelled.

194. The CBP also seeks US$79,857 as compensation for Iraqi dinar banknotes that the CBP had purchased from repatriated Philippine workers in the same manner as the Kuwaiti dinar banknotes.

195. The article 34 notification requested the CBP to submit the Kuwaiti dinar and Iraqi dinar banknotes which form the basis of their claims. The banknotes were received for verification by the Commission in July 1999.

(ii) Analysis and valuation

196. With regard to the claim for the irredeemable Kuwaiti dinar banknotes, the Panel recalls that, in the First Report, the Panel considered the claim of the Sri Lankan Honorary Consul in Jordan. He had, as a humanitarian gesture, exchanged Kuwaiti dinars on behalf of evacuees fleeing Kuwait to provide them with hard currency. The Honorary Consul could not redeem some of the banknotes as they belonged to the cancelled series. The Panel noted that Governing Council decision 7 provided that losses arising out of "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during the period in connection with the invasion or occupation" should be considered as direct losses. 59/ In this regard, the Panel found that:

> "There is a direct link between the theft and circulation of the Central Bank of Kuwait's dinar banknotes by Iraqi officials and the loss incurred by the Claimant. The evidence also demonstrates that the exchanges were made in small amounts in order to provide the Sri Lankan refugees in Jordan with temporary and extraordinary assistance during their evacuation from the region. ... Consequently, the Panel decides that the Claimant's loss arising out of its receipt of stolen Kuwaiti dinar banknotes should be compensated to the extent it is adequately supported by documentary or other appropriate evidence." 60/

197. In the present case, the Panel finds that the evidence demonstrates that the exchanges made by the CBP constituted a form of temporary and extraordinary assistance to evacuees. Accordingly, the Panel determines that the CBP's loss arising out of its exchange of stolen Kuwaiti dinar banknotes is compensable, to the extent it is supported by sufficient documentary and other appropriate evidence.

198. With regard to the claim for the Iraqi dinar banknotes in the CBP's possession, the Panel notes that, despite a request in the article 34 notification to provide an explanation of the nature of the loss, the only explanation that has been provided is that the banknotes "could not be repatriated to Iraq during the Gulf War". No details have been provided of the attempts that have been made since the end of the occupation of Kuwait to redeem the dinars, nor of the basis adopted by the CBP to value its

claim. The Panel finds that the Iraqi dinar banknotes must be treated differently from the Kuwaiti dinar banknotes as the former were not cancelled. The Panel also finds that although it is possible that the CBP may have suffered a loss with regard to these banknotes, in the absence of any explanation as to the nature of the loss, it cannot recommend any compensation.

(iii) Recommendation

199. The Panel recommends an award in the amount of US$1,920,257 for the irredeemable Kuwaiti dinar banknotes in the possession of the CBP. No award of compensation is recommended in respect of the Iraqi dinar banknotes.

(b) Other

(i) Facts and contentions

200. The CBP seeks US$300,000 for the estimated costs incurred in preparing and pursuing its claim before the Commission.

201. In addition, compensation was originally sought in the amount of US$1,969,562 in respect of "opportunity losses" incurred, in respect of the irredeemable banknotes, during the period from 1 August 1990 to 31 December 1994. In its submission of 8 July 1999, the CBP provided an updated calculation of the claimed "opportunity losses" in the amount of US$2,532,294 to account for the period 1 January 1995 to 30 June 1999.

(ii) Analysis and valuation

202. For the reasons set out in section IV.D above, the Panel takes no action in respect of the CBP's claim for the costs of preparing and pursuing its claim.

203. In its response to the article 34 notification, the Claimant explains that its claim for so-called "opportunity losses" is "in accordance with UNCC Decision No. 16 which provides that interest will be awarded". Further, the Claimant's calculation of the amount of this claim clearly indicates that it is a claim for interest on the principal amount sought by the CBP. Given the Claimant's characterization of its claim as one for interest under Governing Council decision 16, the Panel makes no recommendation in respect thereof.

(iii) Recommendation

204. The Panel makes no recommendation in respect the CBP's claim for other costs and losses.

4. Recommendation for the Republic of the Philippines

205. Based on its findings regarding the Claim of the Republic of the Philippines, the Panel recommends compensation in the amount of US$7,567,327.

Table 5. Recommended compensation for the Republic of the Philippines

Claim element	Claim amount (original currency) (US$)	Recommended compensation (US$)
1. Department of Foreign Affairs		
Evacuation costs	1,047,998	1,047,998
Other a/	4,528,774	nil
2. Overseas Workers Welfare Association		
Other tangible property	34,988	13,917
Payment or relief to others	767,760	570,926
Evacuation costs	8,660,231	4,014,229
Other a/	20,282,318	nil
3. Central Bank of the Philippines		
Payment or relief to others	2,000,114	1,920,257
Other a/	4,801,856	nil
Total	42,124,039	7,567,327

a/ These loss types include an interest component. See section IV.G above.

F. Democratic Socialist Republic of Sri Lanka - Central Bank of Sri Lanka (UNCC Claim No. 5000081)

1. Payment or relief to others

(a) Facts and contentions

206. The Central Bank of Sri Lanka seeks compensation for Kuwaiti dinar banknotes brought into the country by evacuated Sri Lankan nationals and exchanged by commercial banks under the direction and authority of the Central Bank of Sri Lanka. According to the Claimant, the Central Bank of Kuwait refused to accept these notes from the Central Bank of Sri Lanka on the ground that they formed part of a stolen and subsequently cancelled series. The Central Bank of Sri Lanka seeks compensation in the amount of KD 871,127.

207. In its response to the article 34 notification, the Claimant advised that the banknotes had been returned by the Central Bank of Kuwait to the Embassy of Sri Lanka in Kuwait. A verification team composed of two members of the secretariat inspected the banknotes at the Embassy of Sri Lanka in Kuwait.

(b) Analysis and valuation

208. The evidence establishes that the Kuwaiti dinar banknotes were exchanged in small amounts in order to provide evacuees with a form of temporary and extraordinary assistance. Accordingly, for the reasons stated at paragraph 196 above, the Panel finds that the Claimant's loss arising out of its exchange of stolen Kuwaiti dinar banknotes is compensable to the extent it is supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

209. The Panel recommends an award in the amount of KD 855,352 (US$2,959,696) for payment or relief to others.

2. Recommendation for the Democratic Socialist Republic of Sri Lanka

210. Based on its findings regarding the Claim of the Democratic Socialist Republic of Sri Lanka, the Panel recommends compensation in the amount of US$2,959,696.

Table 6. Recommended compensation for the Democratic Socialist Republic of Sri Lanka

Claim element	Claim amount (original currency) (KD)	Claim amount (US$)	Recommended compensation (US$)
Payment or relief to others	871,127	3,014,280	2,959,696
Total	871,127	3,014,280	2,959,696

G. Republic of Tunisia - Tunisian Agency for Employment (UNCC Claim No. 5000302)

1. Payment or relief to others

(a) Facts and contentions

211. The Claimant seeks compensation in the total amount of US$1,000,000 for payments made to some 300 evacuees.

(b) Analysis and valuation

212. Despite a request in the article 34 notification for information as to the nature of the payments made to the evacuees and evidence that the payments had, in fact, been made, the Claimant failed to provide any explanation or evidence in support of the Claim.

213. In the absence of any further information and evidence in support of the Claim, the Panel cannot determine whether the loss for which compensation is claimed was a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, this portion of the Claim is not compensable.

(c) Recommendation

214. The Panel recommends no award of compensation for payment or relief to others.

2. Public service expenditures

(a) Facts and contentions

215. The Claimant seeks compensation in the total amount of US$200,000 for extraordinary expenses incurred in reintegrating Tunisian evacuees from Kuwait.

(b) Analysis and valuation

216. The article 34 notification requested the Claimant to provide a detailed explanation as to the basis of its claim for extraordinary expenses, together with evidence indicating how the money was spent. The Claimant's response did not provide any relevant information or documents.

217. In the absence of any further information and evidence in support of this portion of the Claim, the Panel cannot determine whether the loss for which compensation is claimed was a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, this portion of the Claim is also not compensable.

(c) Recommendation

218. The Panel recommends no award of compensation for public service expenditures.

3. Recommendation for the Republic of Tunisia

219. Based on its findings regarding the Claim of the Republic of Tunisia, the Panel recommends no award of compensation.

Table 7. Recommended compensation for the Republic of Tunisia

Claim element	Claim amount (original currency) (US$)	Recommended compensation (US$)
Payment or relief to others	1,000,000	nil
Public service expenditures	200,000	nil
Total	1,200,000	nil

H. Republic of Turkey

1. Ministry of Communications: General Directorate of State Airports (UNCC Claim No. 5000152)

(a) Contract

(i) Facts and contentions

220. The Ministry of Communications originally sought the principal amount of US$81,279, together with interest thereon in the amount of US$41,058, as compensation for amounts owed to it by Iraqi Airways for the rental of offices at the Atatürk International Airport, Ankara and for airport services provided to Iraqi Airways at international airports in Turkey. The evidence indicates that the rental of offices covered the period from October 1990 to September 1994 and that the provision of airport services covered the period from January 1990 to September 1994.

221. In communications dated 4 February 1997 and 24 November 1997, the Claimant submitted updated interest calculations in the amounts of US$18,532 and US$3,357, respectively. In addition, the 24 November 1997 communication attempted to increase the principal amount claimed for rent and for the provision of airport services by US$117,387, together with interest thereon in the amount of US$36,216. In the same communication the Claimant sought compensation for two new claims: US$90,101 and interest thereon in the amount of US$23,792 for services provided by Turkish airports to the aircraft of the "Combined Task Force", and US$28,870,028 for loss of expected "income" to the Claimant as a result of the cancellation of flights between Turkey and Iraq pursuant to the United Nations embargo. Finally, in its March 1999 response to the article 34 notification, the Claimant reduced the principal amount of its claim of US$198,666 for rent and airport services by US$1,000 because of a calculation error.

(ii) Analysis and valuation

222. In accordance with the principles set out in section IV.A above, the Panel determines that the decrease of the claimed amount in the response to the article 34 notification is admissible and that the increases to the claims for rent and airport services are admissible because those increases were made prior to 11 May 1998. However, the Panel considers that claims for services provided to the "Combined Task Force" and for the loss of

expected income, first raised in the communication dated 24 November 1997, are new claims and, as such, are not admissible as they are time-barred.

223. With regard to the airport services provided prior to the date of Iraq's invasion of Kuwait, the Panel notes that paragraph 16 of Security Council resolution 687 (1991) states:

> "[T]hat Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss ... as a result of Iraq's unlawful invasion and occupation of Kuwait."

224. The Panel further notes that the category "E2" Panel, in its first report, considered the issue of the compensability of Iraq's debts existing at the time of the invasion and occupation of Kuwait and made the following determination:

> "[T]he Panel finds that a rule which best implements the Security Council's intention in resolution 687 (1991) is the following:
>
> > In the case of contracts with Iraq, where the performance giving rise to the original debt had been rendered by a claimant more than three months prior to 2 August 1990, that is, prior to 2 May 1990, claims based on payments owed, in kind or in cash, for such performance are outside of the jurisdiction of the Commission as claims for debts or obligations arising prior to 2 August 1990.
>
> 'Performance' as understood by the Panel for purposes of this rule can mean complete performance under a contract, or partial performance, so long as an amount was agreed to be paid for that portion of completed partial performance." 61/

225. The Panel considers that the same reasoning is applicable here. Consequently, that portion of the Claim relating to airport services provided prior to 2 May 1990 is not compensable. The claim relating to losses resulting from the provision of airport services between 2 May and 2 August 1990 is, however, compensable, to the extent that such losses are supported by sufficient documentary and other appropriate evidence.

226. With regard to the offices and airport services provided after 2 August 1990, the Panel notes that by resolution 661 (1990), the United Nations Security Council imposed a trade embargo on Iraq commencing on 6 August 1990. However, given that the facts regarding the provision of offices and airport services after 2 August 1990 remain unclear, and that a literal interpretation of that resolution does not suggest on the face of it that these services outside Iraq are covered, the Panel considers that the trade embargo does not preclude compensation in this case. Nevertheless, upon the commencement of military operations of the Allied Coalition Forces against Iraq on 16 January 1991, and particularly given that Turkey was a member of the Allied Coalition Forces, the Claimant should have taken steps to mitigate its losses by ceasing the provision of offices and airport services. The Panel finds that at that time it should have been clear to the Claimant that the possibility of continuing a contractual relationship with Iraqi Airways was seriously jeopardized. Accordingly, those portions of the Claim relating to offices and airport services provided after 16 January 1991 are not compensable.

227. Consequently, the Panel finds that the portions of the Claim in respect of the provision of offices between October 1990 and 16 January 1991 and in respect of airport services between 2 August 1990 and 16 January 1991 are compensable, to the extent that these losses are supported by sufficient documentary and other appropriate evidence.

228. The Panel finds the portion of the Claim relating to interest falls within the scope of Governing Council decision 16, as discussed in section IV.G above.

(iii) Recommendation

229. The Panel recommends an award in the amount of US$130,424 for contract losses and makes no recommendation in respect of interest.

2. Ministry of Public Works and Settlement: General Directorate of State Hydraulic Works (UNCC Claim No. 5000156)

(a) Public service expenditures

(i) Facts and contentions

230. The Ministry of Public Works and Settlement states that it is the main executive agency involved in the development of land and water resources in Turkey. Its principal responsibilities are the construction

of dams and irrigation systems and the maintenance and supply of water to cities. The department employs personnel and owns machinery to be used for the execution of the above-mentioned works. According to the Claimant, during the period of Iraq's invasion and occupation of Kuwait, some of its workforce and equipment were requisitioned for the "mobilisation and deportation of some civil and military defence material against counter military operations and threat of military action" in south-eastern Turkey. Compensation in the amount of US$5,954,908 is sought in respect of amounts paid to the employees operating requisitioned heavy machinery; costs of operation, maintenance and repair of the machinery; and depreciation of the aforementioned machinery during the period of Iraq's invasion and occupation of Kuwait.

(ii) Analysis and valuation

231. The article 34 notification requested the Claimant to provide a detailed explanation of the nature of the activities for which the requisitioned equipment was used, as well as a copy of the decree authorizing such requisition. The Claimant's response shed no light on the nature of the operations or the use to which the machinery was put. With regard to the decree, the Claimant responded that the decree document "is officially secret and restricted to be disseminated to any third parties."

232. The Panel is unable to satisfy itself on the evidence submitted that the costs claimed were not military costs. This is particularly so given the classified nature of the relevant decree and by the type of machinery said to have been requisitioned, i.e., low-bed trailers, tractor trucks, pick-up trucks, forklifts and bulldozers: machinery normally used to transport heavy equipment and construct fortifications. The Panel therefore considers that the Claim relates to military costs, and, consequently, is not compensable for the reasons given in section IV.B above.

(iii) Recommendation

233. The Panel recommends no award of compensation for public service expenditures.

3. Recommendation for the Republic of Turkey

234. Based on its findings regarding the Claims filed by the Republic of Turkey, the Panel recommends compensation in the amount of US$130,424.

Table 8. Recommended compensation for the Republic of Turkey

Claim element	Claim amount (original currency) (US$)	Recommended compensation (US$)
1. Ministry of Communications: General Directorate of State Airports		
Contract a/	296,829	130,424
2. Ministry of Public Works and Settlement: General Directorate of State Hydraulic Works		
Public service expenditures	5,954,908	nil
Total	6,251,737	130,424

a/ This loss type includes an interest component. See section IV.G above.

I. United Kingdom of Great Britain and Northern Ireland - Foreign and Commonwealth Office (UNCC Claim No. 5000077)

235. The United Kingdom originally sought compensation in the total amount of 2,948,831 pounds sterling ("GBP") for the costs incurred by five departments within the Foreign and Commonwealth Office: the Overseas Estate Department; the Support Services Department; the Consular Department; the Personnel Services Department; and the Nationality, Treaty and Claims Department. However, in a communication dated 27 April 1998 the Claimant increased the claim of the Nationality, Treaty and Claims Department by GBP 268,754, thereby increasing the total amount of the United Kingdom's Claim to GBP 3,217,585. The claims of each department, as reclassified by the Panel, are addressed in turn.

1. Overseas Estate Department

236. The Overseas Estate Department states that it is responsible for diplomatic property located in Kuwait and Iraq and seeks compensation totalling GBP 1,427,815.

(a) Contract

(i) Facts and contentions

237. The Overseas Estate Department seeks GBP 171,832 as compensation for rent paid in advance on its "diplomatic estate" in Kuwait between August

1990 and February 1991, and GBP 262,730 for legal charges "associated with lease renewal and termination" and "to meet legal termination requirements" in respect of leased property in Iraq.

(ii) Analysis and valuation

238. With regard to the portion of the Claim relating to rent paid in advance for the period of Iraq's invasion and occupation of Kuwait, the Panel notes that for the reasons given at paragraph 101 above, this portion of the Claim is not compensable.

239. With regard to the legal charges incurred in relation to property leased in Iraq, the Panel notes that, despite a request in the article 34 notification, the Claimant did not provide any explanation of the nature of the charges or submit any evidence that such charges had in fact been paid. In the absence of such information and evidence, the Panel finds that this portion of the Claim fails to meet the Commission's evidentiary standards and should not, therefore, be compensated.

(iv) Recommendation

240. The Panel recommends no award of compensation for contract losses.

(b) Real and other tangible property

(i) Facts and contentions

241. The Overseas Estate Department seeks GBP 993,253 in respect of the cost of repairing its "diplomatic estate" in Kuwait, for the deterioration of its "office compound" in Iraq, and for tangible property lost, damaged and/or looted from Kuwait and Iraq, including four paintings allegedly worth GBP 1,350 found to be missing from the British Ambassador's residence in Iraq.

(ii) Analysis and valuation

242. With regard to the claims for repair costs and deterioration, the Panel notes that, despite a request in the article 34 notification, the Claimant did not provide any evidence in support of these costs. Accordingly, the Panel finds that these claims fail to meet the Commission's evidentiary standards and should not, therefore, be compensated.

243. Similarly, the Claimant did not provide any evidence in support of its claim for lost, damaged and/or looted tangible property other than a letter from the Government Art Collection to the Claimant dated 13 July 1994 stating the loss of four paintings. Consequently, the Panel recommends an award of compensation only for the loss of these four paintings.

244. The only evidence submitted to support the value of the paintings was an estimate in the letter from the Government Art Collection. A deduction to the recommended award is therefore appropriate to reflect the absence of any further evidence as to the value of the paintings.

(iii) Recommendation

245. The Panel recommends an award in the amount of GBP 700 (US$1,357) for real and other tangible property losses.

2. Support Services Department

(a) Other tangible property

(i) Facts and contentions

246. The Support Services Department states that it is responsible for official Government transport and seeks compensation in the amount of GBP 56,185 for the loss of the official armour-plated vehicle of the British Ambassador in Kuwait.

(ii) Analysis and valuation

247. For the reasons set out in paragraph 110 above, the Panel finds that the loss suffered by the Support Services Department is compensable to the extent that it is supported by sufficient documentary and other appropriate evidence, adjustment being made for depreciation.

(iii) Recommendation

248. The Panel recommends an award in the amount of GBP 35,237 (US$68,289) for other tangible property loss.

3. The Consular Department

(a) Public service expenditures

(i) Facts and contentions

249. The Consular Department seeks compensation in the amount of GBP 771,784 for the cost of respirators and protective clothing supplied to British diplomatic missions in the Persian Gulf area.

(ii) Analysis and valuation

250. In accordance with the reasoning set out in paragraph 59 above, the costs of the respirators and protective clothing are compensable, insofar as they were supplied to British diplomatic missions in Iraq, Kuwait, Israel and Saudi Arabia. Except for the British mission in Riyadh, Saudi Arabia, the protective equipment at issue was not supplied to diplomatic missions in any of these four states. The Panel therefore finds that only the claimed costs in respect of the mission in Riyadh are compensable, to the extent they are supported by sufficient documentary and other appropriate evidence.

251. In the article 34 notification the Claimant was requested to identify the areas where the respirators had been sent. In response, the Claimant provided details of the number of people for whom its diplomatic missions were responsible in Saudi Arabia, Qatar and Bahrain. On the basis of this information The Panel finds this information sufficient to estimate the number of respirators supplied or distributed to the British diplomatic mission in Saudi Arabia.

252. Further, on the basis of the information provided as to the cost of the equipment, its destination and the number of respirators returned to the Claimant at the end of the occupation of Kuwait, the Panel is also able to calculate the cost of supplying respirators to the British diplomatic mission in Saudi Arabia.

253. The Claimant did not provide sufficient details or evidence in support of the claim for the cost of protective clothing supplied to British diplomatic missions in the Persian Gulf area. Accordingly, the Panel finds that this claim fails to meet the Commission's evidentiary standards and should not, therefore, be compensated.

(iii) Recommendation

254. The Panel recommends an award in the amount of GBP 161,772 (US$313,512) for public service expenditures.

4. Personnel Services Department

(a) Payment or relief to others

(i) Facts and contentions

255. The Personnel Services Department seeks compensation in the amount of GBP 249,591 for reimbursements made for loss of personal property to 23 members of the diplomatic service who were in Iraq and Kuwait at the time of Iraq's invasion of Kuwait.

(ii) Analysis and valuation

256. In the Fourth Report, the Panel considered similar claims for reimbursements for personal property losses made by claimants who were not under any contractual obligations to reimburse their staff. The Panel determined that the effect of paragraph 36 of Governing Council decision 7, which provides that compensation is available "to reimburse payments made or relief provided by Governments or international organizations to others ... for losses covered by any of the criteria adopted by the Council", was to render "compensable claims for payments made by Governments in respect of losses for which the recipients would have been entitled to file individual claims before the Commission, to the extent that the underlying individual losses are compensable in accordance with the criteria developed by the Commission for individual claims". 62/

257. The Panel notes that, as with the recipients of the reimbursements considered in the Fourth Report, the members of the British diplomatic service in the present instalment could have filed individual claims before the Commission under categories "C" and "D" for their personal property losses. Accordingly, the Panel finds that the Personnel Services Department's claim for reimbursements is compensable in principle.

258. Despite a request in the article 34 notification to provide evidence of payment of the reimbursements as well as evidence of the underlying losses, the Claimant provided such evidence only in respect of some of the recipients of the reimbursements. Accordingly, the Panel recommends

compensation only for those payments that are supported by sufficient evidence, adjustments being made for depreciation.

(iii) Recommendation

259. The Panel recommends an award in the amount of GBP 60,257 (US$116,777) for payment or relief to others.

(b) Public service expenditures

(i) Facts and contentions

260. The Personnel Services Department also seeks compensation in the amount of GBP 125,240 for miscellaneous costs (including accommodation, telephone calls, subsistence allowances) incurred in calling diplomatic staff who had suffered personal property losses back to the United Kingdom from their subsequent postings to inspect their belongings salvaged from Kuwait.

(ii) Analysis and valuation

261. The Panel notes that despite a request in the article 34 notification to submit documents evidencing the costs for which compensation is claimed, the Claimant has not provided any evidence in support of this portion of its Claim. Accordingly, the Panel finds that this portion of the Claim fails to meet the Commission's evidentiary standards and should not, therefore, be compensated.

(iii) Recommendation

262. The Panel recommends no award of compensation for public service expenditures.

5. Nationality, Treaty and Claims Department

(a) Public service expenditures

(i) Facts and contentions

263. The Nationality, Treaty and Claims Department originally sought compensation in the amount of GBP 318,216 for the costs incurred in processing individual and corporate claims filed with the Commission by

British nationals and corporations. The amount claimed was increased by the Claimant in a communication dated 27 April 1998 to GBP 586,970.

(ii) Analysis and valuation

264. In accordance with the principles set out in section IV.A above, the increase in the amount claimed is admissible. However, for the reasons given in section IV.E above, the Panel finds that the claims processing costs are not compensable.

(iii) Recommendation

265. The Panel recommends no award of compensation for public service expenditures.

6. Recommendation for the United Kingdom of Great Britain and Northern Ireland

266. Based on its findings regarding the Claim of the United Kingdom of Great Britain and Northern Ireland, the Panel recommends compensation in the amount of US$499,935.

Table 9. Recommended compensation for the United Kingdom of Great Britain and Northern Ireland

Claim element	Claim amount (original currency) (GBP)	Claim amount (US$)	Recommended compensation (US$)
1. Overseas Estate Department			
Contract	434,562	826,164	nil
Real and tangible property	993,253	1,888,314	1,357
2. Support Services Department			
Other tangible property	56,185	106,815	68,289
3. The Consular Department			
Public service expenditures	771,784	1,467,270	313,512
4. Personnel Services Department			
Payment or relief to others	249,591	474,508	116,777
Public service expenditures	125,240	238,100	nil
5. Nationality, Treaty and Claims Department			
Public service expenditures	586,970	1,115,913	nil
Total	3,217,585	6,117,084	499,935

J. United States of America - Department of State (UNCC Claim No. 5000035)

267. The United States Department of State originally sought compensation for seven loss types, as reclassified by the Panel - contract, real property, other tangible property, payment or relief to others, evacuation costs, public service expenditures and other losses - in the total amount of US$14,435,987. However, in response to the article 34 notification, the Claimant reduced its Claim to US$14,301,987.

1. Contract

(a) Facts and contentions

268. The Department of State seeks US$478,441 as compensation for reimbursements it made to its employees in Iraq or Kuwait for personal property lost or damaged in those countries. The reimbursements were made pursuant to United States legislation governing the claims of Department of State employees for damage to, or loss of, personal property incidental to their employment service. 63/

(b) Analysis and valuation

269. With regard to the Department of State's claim for reimbursements made to employees for personal property lost or damaged in Iraq or Kuwait, the Panel finds that, for the reasons given at paragraph 35 above, the losses suffered are compensable to the extent they are supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

270. The Panel recommends an award in the amount of US$234,564 for contract losses.

2. Real property

(a) Facts and contentions

271. The Claimant seeks US$161,899 as compensation for the loss of use and enjoyment of Embassy compound properties and staff residences leased in Kuwait during the period 2 August 1990 to 2 March 1991. The amount claimed is based on the amount of rent it paid in advance for that period.

272. The Claimant also seeks US$378,027 as compensation for costs it incurred in repairing and cleaning its Embassy building and grounds in Kuwait, which suffered blast, fire, water and black soot damage during the period of Iraq's invasion and occupation of Kuwait. The Claimant hired a private contractor from the United States to carry out the repairs in 1991, and it hired labourers from Kuwait to do the clean-up work.

(b) Analysis and valuation

273. In the Second Report, the Panel considered a claim by a Government for the loss of use of its Embassy and the Ambassador's residence in Baghdad, which had not been used after 2 August 1990 as a result of the absence of diplomatic relations between that Government and Iraq. There the Panel found that, for the same reasons that a claim by a Government for the loss of rent paid in advance on a diplomatic mission which has been closed does not give rise to a claim for compensation, the loss of use of an Embassy building and Ambassador's residence does not constitute a direct loss within the meaning of paragraph 16 of Security Council resolution 687 (1991). 64/ The Panel finds that the same reasoning is applicable here in respect of the Department of State's claim for the loss of use and enjoyment of Embassy compound properties and staff residences in Kuwait, and that such loss is, therefore, not compensable.

274. With regard to the claim for costs incurred in repairing and cleaning the Claimant's Embassy building and grounds in Kuwait, the Panel considers that, for the reasons given at paragraph 104 above, these costs are compensable to the extent they are reasonable and are supported by sufficient documentary and other appropriate evidence. In this regard, the Panel has reviewed the evidence submitted and finds that, although the Claimant has sufficiently proven the circumstances of its loss, it has not provided sufficient evidence to support the full amount claimed in respect of the repair and clean-up work. Accordingly, the Panel has adjusted the amount of its recommended award to account for these evidentiary deficiencies.

(c) Recommendation

275. The Panel recommends an award in the amount of US$189,013 for real property.

3. Other tangible property

(a) Facts and contentions

276. The Claimant seeks US$124,957 as compensation for the cost of replacing damaged furnishings and fixtures at the residences in Kuwait of the United States Ambassador to Kuwait and the Deputy Chief of Mission, as well as at the United States Embassy offices there. The Claimant also seeks US$912,321 as compensation for the value of "sensitive equipment" destroyed by its staff prior to evacuation from the United States Embassies in Kuwait and Iraq in August 1990. The Claimant additionally seeks US$22,534 as compensation for the cost of transporting replacement furnishings from the United States to Kuwait in 1991 and 1992.

(b) Analysis and valuation

277. With regard to the claims for the cost of replacing damaged furnishings and fixtures, and for the value of destroyed "sensitive equipment", the Panel finds that, for the reasons given at paragraph 110 above, the losses suffered by the Claimant are compensable in principle. These losses are, however, compensable only to the extent that the circumstances and amounts of such losses are supported by sufficient documentary and other appropriate evidence.

278. The Panel considers that, although the Claimant has sufficiently proven that it suffered tangible property losses, it has not provided sufficient documentation to support the full amount claimed in respect of these losses. For example, despite a request in the article 34 notification, the Claimant did not provide invoices or other primary documents evidencing the original purchase price of the items of destroyed "sensitive equipment" and only provided documentary evidence relating to the replacement cost of some items. Accordingly, the Panel has adjusted the amount of its recommended award to account for these evidentiary deficiencies.

279. With regard to the claim for the cost of transporting replacement furnishings to Kuwait, the Panel accepts the contention of the Claimant that it was not possible, under the prevailing circumstances at the time, to find replacement furnishings of a similar make in Kuwait. A deduction is made to the recommended award, however, to reflect the absence of sufficient evidence showing that furnishings were not available from other nearby countries for less than what the Claimant paid.

(c) Recommendation

280. The Panel recommends an award in the amount of US$185,319 for other tangible property loss.

4. Payment or relief to others

(a) Facts and contentions

281. The Claimant seeks US$4,330,088 as compensation for "monetary payments" and/or health and life insurance coverage provided to approximately 700 United States citizens and their family members who were held hostage or were otherwise detained in Iraq or Kuwait after 2 August 1990. The monetary payments and insurance coverage were provided by the Claimant pursuant to United States legislation enacted to provide relief to persons who lost wages and insurance coverage while in a "hostage status" in Iraq or Kuwait. 65/

282. The monetary payments to the eligible hostages covered the period from 2 August 1990 to the date of each hostage's release from Iraq or Kuwait. On the other hand, the insurance coverage for the eligible hostages covered the period from 2 August 1990 and for 12 months following the date of each hostage's release from Iraq or Kuwait. The evidence indicates that the last of the eligible hostages was "released" on 26 February 1991.

(b) Analysis and valuation

283. The Panel considers that the monetary payments and costs of insurance coverage provided by the Department of State constitute losses sustained as a result of "hostage-taking or other illegal detention" and "payments made or relief provided by Governments or international organizations to others" within the meaning of paragraphs 34(e) and 36, respectively, of Governing Council decision 7 and are thus in principle compensable.

284. The Panel finds that the monetary payments were made to compensate for the loss of income the hostages would have earned had they not been taken hostage or otherwise illegally detained. Accordingly, the time period for which such payments are justified is the length of their detention. This is subject, however, to the principle set out by the Panel in the First Report that the Commission cannot award more to Governments who provided relief to others than the recipients of the relief would have been entitled to had they filed individual claims.

285. The Panel therefore recommends compensation for the monetary payments, to the extent that they are supported by sufficient documentary and other appropriate evidence and subject to the limitation set out in the paragraph above.

286. With respect to the cost of providing insurance coverage, the Panel considers that for the period of the hostage status and for a three-month transition period after a hostage's release, the insurance coverage provided by the Claimant amounted to temporary and extraordinary relief and the cost thereof was a direct result of Iraq's invasion and occupation of Kuwait. However, after the three-month transition period, the cost ceased to be temporary and extraordinary in nature.

287. Accordingly, the Panel recommends compensation for the costs of insurance coverage for a maximum period including three months following the release of each of the hostages, to the extent that the costs are supported by sufficient documentary and other appropriate evidence.

(c) Recommendation

288. The Panel recommends an award in the amount of US$2,878,381 for payment or relief to others. 66/

5. Evacuation costs

(a) Facts and contentions

289. The Claimant seeks US$3,781,039 as compensation for transportation, food and accommodation costs that it incurred in connection with the evacuation of United States nationals from Iraq, Kuwait, Saudi Arabia, Israel and Bahrain. According to the Claimant, the majority of the evacuees left the region on chartered aircraft flights and flew to the United States via Europe. Part of the transportation costs claimed by the Department of State relate to bank wire transfer fees incurred in September 1990 in connection with charter aircraft flights hired from Iraqi Airways.

290. The Claimant also seeks US$741,753 as reimbursement for subsistence allowances paid by the Claimant to its employees and their dependants evacuated from Iraq, Kuwait, Saudi Arabia, Israel and Bahrain. The payments were intended to cover the living expenses of the employees and their dependants following their arrival in the United States for a period of up to 180 days.

291. Additionally, the Claimant seeks US$91,746 as compensation for (a) travel costs incurred in sending some of its employees to meet and assist in the logistics of evacuation flights from the Middle East and Europe to the United States, and (b) travel, meeting and video production costs relating to the Claimant's "Family Outreach" assistance programme for the families of United States nationals held hostage or otherwise detained in Iraq or Kuwait.

(b) Analysis and valuation

292. The Panel considers that the principles governing the compensability of claims for evacuation costs identified at paragraph 44 above, are applicable to the evacuation claim of the Department of State. On the basis of these principles, the Panel finds that the transportation, including the bank wire transfer fees, food and accommodation costs incurred to evacuate United States nationals from Iraq, Kuwait, Israel and Saudi Arabia are compensable, to the extent they are supported by sufficient documentary and other appropriate evidence.

293. With regard to the claim for subsistence allowances, the Panel notes that in the Third and Fourth Reports it found that allowances paid to Government officials and family members after their arrival in their home State were not compensable as they "were not intended to cover 'temporary and extraordinary living expenses that result[ed] from individuals' departure from Kuwait or Iraq during the period of 2 August 1990 to 2 March 1991'" 67/ but, rather, were "discretionary payments for ongoing ordinary living expenses ... incurred after a person has left the region". 68/ For these same reasons, the Panel finds that the Department of State's claim for subsistence allowances is not compensable.

294. The Panel considers that the principles set out in paragraphs 56 and 57 above are applicable to the Department of State's claim for the costs of its employees meeting and assisting with evacuation flights, and to its claim for the costs incurred in undertaking and implementing a programme designed to assist the families of hostages to cope with the crisis. Consequently, the Panel finds that these costs are not compensable, since they do not represent expenditures of an extraordinary nature.

(c) Recommendation

295. The Panel recommends an award in the amount of US$3,770,339 for evacuation costs.

6. Public service expenditures

(a) Facts and contentions

296. The Claimant seeks US$815,521 as compensation for the costs of establishing and operating a "Task Force" in the United States which received and responded to enquiries regarding the welfare and whereabouts of United States nationals in the Persian Gulf region and which issued travel advisories and warnings "regarding the Gulf Crisis". These costs included the cost of employee benefits, salaries and overtime, office supplies and communications equipment, and the cost of crisis management training provided to the Claimant's employees by a private company.

297. The Claimant originally sought US$2,573,661 as compensation for the increased costs of operating United States diplomatic and consular posts in Kuwait, Iraq, Saudi Arabia, Israel and Bahrain during the period from 2 August 1990 to 2 March 1991. These increased costs allegedly included employee overtime and danger pay, operational items such as hand-held radios and office supplies, the cost of transferring additional staff to the region, and the cost of purchasing protective equipment, such as gas masks, for distribution to employees and United States nationals. In its response dated 29 June 1999 to the article 34 notification, the Claimant reduced its claim for these costs to US$2,439,661.

(b) Analysis and valuation

298. The Panel considers that the principles governing public service expenditures of a general nature, as set out in paragraphs 56 and 57 above, are applicable to the Department of State's claims for the costs of the "Task Force" and the increased costs of the diplomatic and consular posts. Applying these principles, the Panel finds that the Department of State incurred the expenses in the exercise of its "protective functions in times of emergency" and that the expenses are not of such an extraordinary nature as to warrant their compensability.

299. With regard to the Department of State's claim for the costs of purchasing protective equipment, such as gas masks, for distribution to employees and United States nationals, the Panel considers that the principles set out in paragraph 59 above are applicable here. The Panel finds, however, that the Claimant produced insufficient documentary and other appropriate evidence to permit it to verify and value the Department of State's claim for the costs of protective equipment. In particular, despite a request in the article 34 notification, the Claimant did not

provide sufficient evidence of the amount and type of protective equipment purchased by its diplomatic and consular posts, nor a breakdown of the destination of such equipment. Accordingly, this claim is not compensable.

(c) Recommendation

300. The Panel recommends no award of compensation for public service expenditures.

7. Other

(a) Facts and contentions

301. The Claimant seeks US$24,000 as compensation for the costs of preparing its Claim for submission to the Commission. The Claimant also seeks interest on the compensation awarded, running from the date of the loss to the date on which payment of the award is made.

(b) Analysis and valuation

302. For the reasons set out at section IV.D above, the Panel takes no action in respect of the claim for claim preparation costs.

303. The Panel finds the claim for interest falls within the scope of Governing Council decision 16, as discussed in section IV.G above.

(c) Recommendation

304. The Panel makes no recommendation in respect of claim preparation costs and in respect of interest.

3. Recommendation for the United States of America

305. Based on its findings regarding the Claim of the United States of America, the Panel recommends compensation in the amount of US$7,257,616.

Table 10. Recommended compensation for the United States of America

Claim element	Claim amount (original currency) (US$)	Recommended compensation (US$)
Contract	478,441	234,564
Real property	539,926	189,013
Other tangible property	1,059,812	185,319
Payment or relief to others	4,330,088	2,878,381
Evacuation costs	4,614,538	3,770,339
Public service expenditures	3,255,182	nil
Other	24,000	nil
Total	14,301,987	7,257,616

VI. SUMMARY OF RECOMMENDATIONS

306. Based on the foregoing, the Panel recommends the following amounts of compensation for direct losses suffered by the Claimants as a result of Iraq's invasion and occupation of Kuwait:

(a) Canada - Consolidated Claim: US$9,292,112;

(b) The Federal Republic of Germany - Ministry of Defence: US$63,416;

(c) The Kingdom of the Netherlands: US$220,086;

(d) The Islamic Republic of Pakistan: US$16,535,557;

(e) The Republic of the Philippines - Consolidated Claim: US$7,567,327;

(f) The Democratic Socialist Republic of Sri Lanka - Central Bank of Sri Lanka: US$2,959,696;

(g) The Republic of Tunisia - Tunisian Agency for Employment: NIL;

(h) The Republic of Turkey: US$130,424;

(i) The United Kingdom of Great Britain and Northern Ireland - Foreign and Commonwealth Office: US$499,935; and

(j) The United States of America - Department of State: US$7,257,616.

Geneva, 4 February 2000

(Signed) Mr. Bjørn Haug
Chairman

(Signed) Mr. Georges Abi-Saab
Commissioner

(Signed) Mr. Michael J. Bonell
Commissioner

Notes

1/ Governing Council decision 10, "Provisional Rules for Claims Procedure", (S/AC.26/1992/10).

2/ "F1" claims are the claims of international organizations and all Governments other than the Governments of the Hashemite Kingdom of Jordan, the State of Kuwait and the Kingdom of Saudi Arabia.

3/ The amounts include amendments made by the Claimants within the deadlines discussed in section IV.A in this Report. Portions of the Canadian, German and Netherlands Foreign Ministry claims that related to environmental losses were severed and assigned to the category "F4" Panel, appointed to review environmental claims. The amounts claimed are stated in United States dollars although many Claims were originally expressed in other currencies. In respect of Claims filed in other denominations, the United States dollar amounts have been calculated by using the August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics, Vol. XLV, No.4, April 1991, (ST/ESA/STAT/SER.1/220).

4/ Category "C" claims are individual claims for damages up to US$100,000 while category "D" claims are individual claims for damages above US$100,000. Pursuant to Governing Council decision 1, (S/AC.26/1991/1), as confirmed in paragraph 3 of Governing Council decision 13, (S/AC.26/1992/13), questions of multiple recovery do not arise in relation to payments made under category "A" (departure claims). It was, therefore, not necessary to carry out cross-category checks in respect of evacuation costs and departure claims in category "A".

5/ Cross-category checks revealed that compensation totalling US$4,077 was recommended in respect of the three category "C" claimants for the same losses for which compensation would otherwise have been recommended for the United States of America - Department of State. The amount of compensation recommended for the United States' claim in respect of losses for "payment or relief to others" takes into account the amounts recommended by the category "C" Panel for those three claimants.

6/ "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)", (S/AC.26/1997/6), ("the First Report"), paras. 47-64. See also "Report and Recommendations made by the Panel of Commissioners concerning Part Two of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)", (S/AC.26/1998/4), ("the Second Report"), para. 45; "Report and

Recommendations made by the Panel of Commissioners concerning the Second Instalment of 'F1' Claims", (S/AC.26/1998/12), ("the Third Report"), para. 75; and "Report and Recommendations made by the Panel of Commissioners concerning the Third Instalment of 'F1' Claims", (S/AC.26/1999/7), ("the Fourth Report"), para. 75.

7/ See the First Report, para. 62.

8/ See Letter dated 11 March 1998 from the secretariat to the Permanent Missions of States and Offices of International Organizations (UNCC/EXE/614/1998); Summary Record of the sixty-fourth Meeting of the Governing Council, (S/AC.26/SR.64), para. 10 and Provisional Summary Record of the seventy-seventh Meeting of the Governing Council, (S/AC.26/SR.77), para. 14.

9/ Governing Council decision 19, "Military Costs", (S/AC.26/Dec.19 (1994)).

10/ Governing Council decision 18, "Distribution of Payments and Transparency", (S/AC.26/Dec.18 (1994)).

11/ The Third Report, para. 118. See also, the Fourth Report, paras. 134-135.

12/ See, e.g., "Report and recommendations made by the Panel of Commissioners concerning the First Instalment of individual claims for damages up to US$100,000 (category 'C' claims)" (S/AC.26/1994/3), (the "'C' Report"), pp. 31-32; "Report and recommendations made by the Panel of Commissioners concerning the First Instalment of 'E2' claims" (S/AC.26/1998/7), para. 279; "Report and recommendations made by the Panel of Commissioners concerning the First Instalment of 'E4' claims" (S/AC.26/1999/4), para. 227; and the First Report, para. 100.

13/ The First Report, paras. 99-102; the Third Report, paras. 126 and 128; and the Fourth Report, paras. 157-160.

14/ Ibid., and also the Second Report, para. 74.

15/ United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/220).

16/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16).

17/ "United Nations Compensation Commission, Claim Forms for Governments and International Organizations (Form F)", Part "F", Summary of Losses Claimed.

18/ UNCC claim number 5000300.

19/ The Fourth Report, para. 88. See also, the First Report, paras. 67-68 and the Third Report, paras. 83-85.

20/ The principles set out in section IV.C above are not applicable here since the payment at issue does not constitute a relief contribution.

21/ The First Report, paras. 92-96 and the Third Report, paras. 100-111.

22/ The Panel recognizes that the category "E2" Panel in its "Report and Recommendations made by the Panel of Commissioners Concerning the Third Instalment of 'E2' Claims" (S/AC.26/1999/22), at paras. 69 and 70, found that there were military operations or a threat thereof affecting the land, waters and airspace of Bahrain (for the period 22 February 1991 to 2 March 1991) and Qatar (for the period 25 February 1991 to 2 March 1991). However, the Panel considers that the context and factual circumstances underlying the category "E2" Panel's determination are different from those faced by this Panel, which relate to a government's evacuation of individuals and the provision of protective measures.

23/ The payment made to Iraqi Airways for the chartering of the aircraft does not constitute a violation of the embargo imposed on Iraq; at its fifth meeting held on 31 August 1990, the United Nations Sanctions Committee decided that flights carrying passengers only would not contravene Security Council resolution 661 (1990), (S/AC.25/SR.5, 12 September 1990), reprinted in D.L. Bethlehem (Ed.), The Kuwait Crisis: Sanctions and their Economic Consequences (1991), p. 794, at p. 801.

24/ The Third Report, para. 120.

25/ Ibid., para. 121.

26/ The Fourth Report, para. 148.

27/ The First Report, para. 98.

28/ The Third Report, para. 122.

29/ The Fourth Report, para. 140.

30/ The First Report, paras. 83-84. See also the "'C' Report", p. 12.

31/ The Fourth Report, para. 117.

32/ Ibid.

33/ Governing Council decision 7, "Criteria for additional Categories of Claims", (S/AC.26/1991/7/Rev.1).

34/ UNCC Claim number 5000305.

35/ Security Council resolution 688 (1991) of 5 April 1991 condemned the repression of the Iraqi civilian population in many parts of Iraq, including in Kurdish populated areas which had led to a massive flow of refugees and, in paragraph 6, appealed to all Member States and all humanitarian organizations to contribute to the humanitarian relief efforts.

36/ UNCC Claim number 5000306.

37/ The First Report, para.74. See also, the Second Report, paras. 55-56; the Third Report paras.78-79 and the Fourth Report, paras. 78-80.

38/ The Third Report, para. 81.

39/ The First Report, paras. 71-73; the Second Report, paras. 63 and 73; the Third Report, paras. 90-92 and the Fourth Report, paras. 91-92.

40/ The invoices submitted in support of this claim indicate that the repair costs amounted to KD 700, which converts to NGL 4,112 after application of the rate of exchange adopted by the Panel. See para. 27 of this Report.

41/ The First Report, paras. 76-78. See also, the Third Report, para. 94 and the Fourth Report, para. 100.

42/ "Sanction Decision on the Exchange of Trade through Aviation and Shipping, Iraq and Kuwait 1990", 10 August 1990/Nr S/J 31.434 Director-General of Shipping, Industry and Maritime Affairs/Legislation and Legal Affairs Branch, published in the Staatscourant (Government Gazette) 154 dated 10 August 1990.

43/ Governing Council decision 9, "Propositions and Conclusion on Compensation for Business Losses: Types of Damages and Their Valuation", (S/AC.26/1992/9).

44/ Governing Council decision 15, "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause", (S/AC.26/1992/15*).

45/ See also para. 71 of this Report.

46/ The Panel notes that the Netherlands was a member of the Allied Coalition Forces, and therefore subject to Governing Council decision 19.

47/ "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Claims for Departure From Iraq or Kuwait (Category "A" Claims)" (S/AC.26/1994/2), p. 27.

48/ Governing Council decision 13, "Further Measures to Avoid Multiple Recovery of Compensation by Claimants," para. 3.b. (S/AC.26/1992/13).

49/ In the absence of information regarding the date that the European Commission's financial contribution was received by the Government of Pakistan, the Panel proceeds to use 17 December 1990 as the date for determining the currency exchange rate for US$4.45 million. This is the date that Norway's financial contribution was transferred to the Government of Pakistan, and the Panel therefore considers it reasonable to utilize such date. Consequently, the European Commission's financial contribution of US$4.45 million converts to PKR 97,455,000, using the monthly rate for December 1990 as reported in the United Nations Monthly Bulletin of Statistics.

50/ The First Report, para. 85.

51/ The Third Report, para. 97. See also the Fourth Report, paras. 104-106.

52/ See para. 71 of this Report.

53/ Norway's financial contribution of US$2.58 million converts to PKR 56,502,000 as at 17 December 1990. See endnote 49 above.

54/ See also the discussion of windfall profits in "Report and Recommendations made by the Panel of Commissioners concerning the First Instalment of 'E4' Claims", (S/AC.26/1999/4), paras. 175-181.

55/ S/AC.26/1994/2, p. 25.

56/ This figure is based on the Claimant's conversion of loss amounts it incurred in currencies other than United States dollars.

57/ This figure is based on the Claimant's conversion of loss amounts it incurred in currencies other than United States dollars.

58/ The Third Report, paras. 95-97; and the Fourth Report, paras. 104-106.

59/ Governing Council decision 7, op. cit.

60/ The First Report, para. 88.

61/ "Report of recommendations made by the Panel of Commissioners concerning the First Instalment of 'E2' Claims", (S/AC.26/1998/7), para. 90.

62/ The Fourth Report, paras. 108-109.

63/ The Military Personnel and Civilian Employees' Claims Act of 1964 (78 Stat. 767, 31 U.S.C. 24-243), as amended by Public Law No. 91-311 and Public Law No. 96-519.

64/ The Second Report, paras. 55-56.

65/ Section 599C of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law No. 101-513).

66/ The amount recommended takes into account the amounts recommended by the category "C" Panel in respect of three individual claimants, as noted in para. 9 of this Report.

67/ The Third Report, para. 106; and the Fourth Report, paras. 130-131.

68/ Ibid.